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2 **MIKE GLEASON**  
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3 **WILLIAM MUNDELL**  
Commissioner  
4 **JEFF HATCH-MILLER**  
Commissioner  
5 **KRISTIN MAYES**  
Commissioner  
6 **GARY PIERCE**  
Commissioner

7  
8 **IN THE MATTER OF QWEST**  
9 **CORPORATION'S PETITION FOR**  
10 **ARBITRATION AND APPROVAL OF**  
11 **AMENDMENT TO INTERCONNECTION**  
12 **AGREEMENT WITH ARIZONA DIALTONE,**  
13 **INC. PURSUANT TO SECTION 252(B) OF**  
14 **THE COMMUNICATIONS ACT OF 1934, AS**  
15 **AMENDED BY THE**  
16 **TELECOMMUNICATIONS ACT OF 1996**  
17 **AND APPLICABLE STATE LAWS**

**DOCKET NO. T-01051B-07-0693**  
**T-03608A-07-0693**

**QWEST'S CORPORATION'S REPLY**  
**IN SUPPORT OF MOTION FOR AN**  
**ORDER AWARDING QWEST'S**  
**REQUESTED RELIEF REGARDING**  
**THE PROPOSED TRO/TRRO**  
**AMENDMENT**

18 Pursuant to the Procedural Order dated February 6, 2008, Qwest Corporation ("Qwest")  
19 hereby files its reply in support of its Motion.

20 As all the parties have noted, there is substantial overlap between the issues in this docket  
21 and those in Docket No. T-03608A-07-0694 (the "Complaint Docket"). A copy of Qwest's  
22 reply brief in support of its Motion in the Complaint Docket ("Complaint Docket Reply Brief")  
23 is attached hereto, marked as Exhibit 1. Due to the identical nature of the issues and the  
24 arguments made by the parties in both dockets, it is expedient and proper to adopt Qwest's  
25 Complaint Docket Reply Brief in its entirety, and by reference incorporate it herein, with all  
26 references to the Complaint Docket understood to refer to this docket as well.

1 Most of the Commission Staff's Comments on Qwest's Motion ("Staff's Comments")  
2 were directed at matters now foregone, at least for these proceedings. Arizona Dialtone has  
3 dropped its undefined "billing disputes" issues, and states that it is willing to convert its  
4 remaining UNE-P services to Qwest resale service within thirty days. As stated by Arizona  
5 Dialtone, the only issue remaining is the back-billing, for the one-year transition period and for  
6 the period from the present back to March 11, 2006. While the back-billing relates to periods of  
7 time now passed, that fact does not necessarily mean the back-billing language for the contract  
8 may not be determined in an arbitration under Section 252 for a TRRO Amendment, given the  
9 circumstances. Qwest has demonstrated that as a matter of law, the parties' ICA should contain  
10 the back-billing language.

11 Further, Qwest has stated, back-billing provisions have been included in the TRRO  
12 Amendments that have been signed with the other CLECs, in recognition that the change of law  
13 was recognized retroactively. Thus, insertion of the back-billing provisions is appropriate in the  
14 arbitration.

15 Staff's Comments regarding which docket should be used for certain types of relief more  
16 appropriately should be made in a procedural argument than in the context of these dispositive  
17 motions. However, regardless of which docket the back-billing is determined in, it is clear that  
18 Qwest is entitled to the relief, and it should be granted expeditiously, because, as the Staff  
19 recognizes in its Comments, the *TRRO* contemplated timely implementation of the changes.<sup>1</sup>

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22 ///

23 ///

24 ///

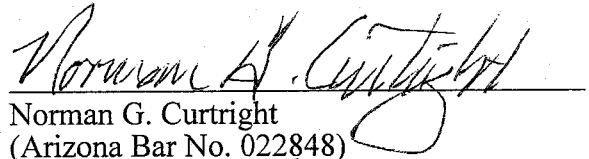
25

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26 <sup>1</sup> Staff's Comments, p. 4.

1 RESPECTFULLY SUBMITTED this 29th day of February, 2008.

3 QWEST CORPORATION

4 

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26 this 29th day of February, 2008, to:

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*Diane Kypar*

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# **EXHIBIT 1**

1                               **BEFORE THE ARIZONA CORPORATION COMMISSION**

2   **MIKE GLEASON**  
          Chairman  
3   **WILLIAM MUNDELL**  
          Commissioner  
4   **JEFF HATCH-MILLER**  
          Commissioner  
5   **KRISTIN MAYES**  
          Commissioner  
6   **GARY PIERCE**  
          Commissioner

7  
8   **IN THE MATTER OF THE FORMAL**  
9   **COMPLAINT OF QWEST CORPORATION**  
10   **AGAINST ARIZONA DIALTONE, INC. TO**  
11   **ENFORCE ITS INTERCONNECTION**  
12   **AGREEMENT**

**DOCKET NO. T-03608A-07-0694**  
**T-01051B-07-0694**

**QWEST'S CORPORATION'S REPLY**  
**IN SUPPORT OF MOTION FOR**  
**JUDGMENT ON THE PLEADINGS**

13  
14  
15  
16           Pursuant to the Procedural Order dated February 6, 2008, Qwest Corporation ("Qwest")  
17 hereby files its Reply In Support of Motion for Judgment on the Pleadings (the "Motion").  
18

19   **I.     INTRODUCTION**  
20

21           In its Opposition to Motion for Judgment on the Pleadings ("Arizona Dialtone's  
22 Opposition")" Arizona Dialtone attempts to distance itself from the admissions it made in its  
23 Answer by misconstruing the pleadings, and by improperly adding factual allegations that were  
24 not in the pleadings. Further, Arizona Dialtone changes its position on critical issues. Arizona  
25 Dialtone's strategy appears to be to revise the history of this long-running dispute, in order to  
26 cast the aggrieved party Qwest in a bad light, in order to distract attention from Arizona

1 Dialtone's persistent actions to avoid converting its UNE-P circuits to higher cost alternatives  
2 for as long as possible. Indeed, the end game for Arizona Dialtone now is to finally accomplish  
3 the conversion, but to pocket the savings for the period of noncompliance.

4 If Arizona Dialtone's scheme is allowed, it will have become the only CLEC that has  
5 been allowed to forestall conversion of UNE-P to alternatives for two years after the FCC  
6 deadline for transition, without paying the back-billing for that period of delay. A ruling in favor  
7 of Arizona Dialtone on the back-billing issue will send a strong signal that all any company that  
8 will be financially disadvantaged by an FCC order needs to do to avoid the disadvantage is to  
9 stall. Further, Arizona Dialtone's actions amount to a unilateral, unlawful usurpation of an  
10 advantage over the companies that implemented the FCC's change of law timely and in good  
11 faith.

12 The Commission should not set the precedent that a carrier can profit by the  
13 gamesmanship Arizona Dialtone has engaged in and continues to play in this proceeding. Ample  
14 basis exists in the pleadings that have been filed, and in Arizona Dialtone's Opposition filing, for  
15 the Commission to act now to right the wrongs that Arizona Dialtone has committed. Arizona  
16 Dialtone's Opposition is fraught with inconsistencies and laden with admissions. Its statements,  
17 when considered with the admissions made in its Answer, and together with the application of  
18 basic legal principles and logic, compels the conclusion that Qwest's request for judgment on  
19 the pleadings should be granted.

20 In this Reply, Qwest will demonstrate that Arizona Dialtone's claims that it was Qwest's  
21 actions, not Arizona Dialtone's, that caused Arizona Dialtone to be unable to comply are hollow.  
22 Arizona Dialtone could convert its circuits at any time, without a TRRO Amendment. The  
23 pleadings together with the additional matters put before the Commission in Arizona Dialtone's  
24 Opposition filing show that its claim that it was willing to sign a TRRO amendment is an empty  
25 statement, because it was never willing to sign a TRRO amendment that would result in higher  
26 rates, even though those rates were lawfully established. The pleadings and filings show that the

1 parties had a long-standing dispute over the rate that should apply to alternative services, and  
2 they neither negotiated any alternative arrangements nor became obligated to alternative  
3 arrangements through conduct or course of dealing. Quite the opposite, the documents Arizona  
4 Dialtone has put before the Commission show that the parties expressly identified their points of  
5 disagreement on multiple occasions. In fact, Arizona Dialtone's claim that the parties made  
6 "alternative arrangements" that it is entitled to rely upon is belied by those expressed  
7 disagreements, and by Arizona Dialtone's written proposals made in 2006, that called for a  
8 retroactive true up.

9 Last, and most telling, Arizona Dialtone has significantly changed its position in this  
10 controversy. In the section captioned "AZDT's Current Position,"<sup>1</sup> Arizona Dialtone withdraws  
11 its spurious claims for a setoff to the backbilling Qwest is owed, and further adopts as its current  
12 position, that it will enter into an "appropriate" form of TRRO amendment. Importantly,  
13 Arizona Dialtone states that as part of that "appropriate" agreement, it is "willing to convert its  
14 remaining customers to Qwest's resale rate within 30 days of execution of a TRRO amendment,  
15 and would be willing to have this obligation written into a TRRO amendment." By this  
16 statement, Arizona Dialtone essentially admits that its objections to Qwest's rates have been  
17 wrong all along. If conversion to resale and payment of the resale rate is appropriate now, it was  
18 also appropriate when Qwest first requested it, and indeed during the years that Arizona Dialtone  
19 refused to sign a TRRO amendment that calls for the very thing that Arizona Dialtone now says  
20 is "appropriate." The Commission should grant the Motion, and provide Qwest the relief that  
21 Arizona Dialtone has been dodging since the effective date of the TRRO, nearly three years ago.

## 22 23 **II. DISCUSSION**

### 24 25 **A. Arizona Dialtone Is In a Dilemma of Its Own Making**

26 <sup>1</sup> Arizona Dialtone's Opposition, p. 11. (Emphasis added).



1  
2 Arizona Dialtone attempts to play the victim, claiming that it is somehow Qwest's  
3 bullying that prevented Arizona Dialtone from following the FCC's order. Its claims are hollow.

4 For example, Arizona Dialtone asserts that Qwest's insistence on including in the TRRO  
5 amendment liability to Arizona Dialtone for back-billing of the FCC-ordered transition rate and  
6 Qwest's resale rates after the transition period, is the reason Arizona Dialtone "has been unable"  
7 to sign an appropriate form of TRRO amendment.<sup>2</sup> What Arizona Dialtone fails to state is that it  
8 always has been free to convert any of its circuits to any alternative service that Qwest or any of  
9 Qwest's competitors offers, without signing any amendment at all.<sup>3</sup> The only thing that stopped  
10 Arizona Dialtone from converting its circuits earlier was its gambit to continue to receive the  
11 benefit of UNE-P at TELRIC and its unwillingness to pay the rate for alternatives. It was  
12 Arizona Dialtone's own strategy that caused the back-billing liability to mount higher and  
13 higher, month after month, year after year.

14 B. Arizona Dialtone's Claim That It Sought to "Negotiate" Different Rates But That  
15 Qwest Had a "Take It Or Leave It" Style That Prevented The Parties From  
16 Reaching An Appropriate Agreement Is Disingenuous. Qwest Does Not Have  
Unfettered Discretion To Negotiate Rates.

17 Arizona Dialtone unfairly characterizes Qwest as being unwilling to negotiate. However,  
18 the matters about which Qwest would not negotiate were those about which it had no obligation  
19 to negotiate, or could not negotiate without violating its duty of nondiscrimination. For  
20 example, Mr. Bade, in his affidavit states:

21 From the beginning, Qwest has adopted a take it or leave [it] style of negotiations. With  
22 respect to the proposed TRRO amendment Qwest took the position that AZDT was  
23 required to pay the "plus \$1.00" rate for the transition period, and was required to pay  
Qwest's resale rate or its QPP rate thereafter, even though AZDT never agreed to those  
rates, I had repeatedly made clear that AZDT would not pay those rates[.]

24  
25 <sup>2</sup> *Id.*, p. 4, lines 3-6; p. 10, lines 17-21.

26 <sup>3</sup> Indeed, Arizona Dialtone now congratulates itself that has [finally] migrated half of its  
customers to other CLECs, whose rates are cheaper than Qwest's resale rate. Affidavit of  
Thomas Bade, Exhibit A to Arizona Dialtone Opposition ("Bade Affidavit"), ¶¶ 15-16.

1 But, Arizona Dialtone never explains what basis it could possibly have, lawfully, for refusing to  
2 pay the transition rates set by the FCC, or why Qwest's refusal to negotiate something different  
3 than the FCC-ordered transition rate is objectionable.

4 In fact, Qwest was not under any obligation to negotiate a different rate for the  
5 continuation of UNE-P. *TRRO* ¶ 228 quoted by Arizona Dialtone states that the transition period  
6 provided by the FCC was a default process, and "carriers remain free to negotiate alternative  
7 arrangements superseding this transition period." (A copy of the relevant pages of the *TRRO* are  
8 attached hereto, marked as Appendix 1). Footnote 633 to ¶228 shows what the FCC had in mind  
9 when it spoke of "alternative arrangements." Footnote 633 cites the very first QPP type of  
10 agreement Qwest entered, by which Qwest agreed to provide a combination of arrangements that  
11 offered the same functionality as did UNE-P, as a commercially negotiated agreement. This  
12 reference makes clear that the "alternative arrangements" the FCC contemplated by ¶ 228 were  
13 for alternative service arrangements (i.e., services providing an alternative to the continuation of  
14 UNE-P), and did not contemplate that carriers would bargain for a different rate than the FCC  
15 established for UNE-P during the transition period. Qwest was absolutely entitled to insist on  
16 the FCC's transition rate.

17 Regarding Qwest's position that the rate that should be applied after March 11, 2006  
18 should be the PAL and POTs resale rates, or the rates for alternative arrangements provided  
19 under QPP commercial agreements, Arizona Dialtone studiously ignores that 1) the resale rate is  
20 fixed by tariff and the Arizona Commission's established discounts for resale services; 2) the  
21 QPP rates are established by contract with other carriers who have not shirked their duty to  
22 convert; and 3) in neither situation can Qwest lawfully discriminate in favor of one carrier over  
23 others, which would be the case if Qwest were to negotiate a more favorable rate for Arizona  
24 Dialtone.

25 For the reasons stated above, it is clear that the only rates the parties could have lawfully  
26 agreed upon for the alternative services were those that Qwest has asked to be paid. This is a

1 question of law, and the Commission can, and should, rule in Qwest's favor now.

2 C. Arizona Dialtone Now Admits That the Resale Rate is Appropriate Prospectively,  
3 Which Necessarily Admits That the Resale Rate Was Appropriate All Along

4 Arizona Dialtone's Opposition adopts as its current position that it will enter into an  
5 "appropriate" form of TRRO amendment. Arizona Dialtone states that as part of that  
6 "appropriate" agreement, it is "willing to convert its remaining customers to Qwest's resale rate  
7 within 30 days of execution of a TRRO amendment, and would be willing to have this obligation  
8 written into a TRRO amendment." By this statement, Arizona Dialtone essentially admits that  
9 its objections to Qwest's resale rates have been wrong all along. If conversion to resale and  
10 payment of the resale rate is appropriate now, it was also appropriate when Qwest first requested  
11 it, and during the years that Arizona Dialtone refused to sign a TRRO amendment that calls for  
12 the very thing that Arizona Dialtone now says is appropriate. Arizona Dialtone's refusal to  
13 convert its circuits because of disagreement over the resale rate was unreasonable and wrong,  
14 and the remedy for that is for the Commission to order Arizona Dialtone to sign the TRRO  
15 Amendment with the back-billing liability language, and to pay the back-billing calculated  
16 according to the difference between the resale rate and the UNE rate, back to March 11, 2006.

17 D. Contrary to Arizona Dialtone's Assertions, It Previously Proposed That It Should  
18 Pay the FCC-Ordered "Plus \$1" Rate During the Transition Year

19 Arizona Dialtone's assertion that it "never" agreed to pay the FCC-ordered transition  
20 rate, is belied by the very negotiation history Arizona Dialtone referred to in its Opposition.  
21 Attached to the Arizona Dialtone Opposition is the Bade Affidavit, and attached to the Bade  
22 Affidavit is Exhibit 1, which is an exchange of emails between the companies on June 20, 2006.  
23 By that exchange, Qwest returned a negotiation draft amendment that contained the parties'  
24 competing language proposals. Qwest notes that this draft contains Arizona Dialtone's  
25 proposed language, and it is the same negotiation draft that was attached as Appendix A to its  
26 Petition for Arbitration in Docket No. T-01051B-07-00693. As further verification that the

1 language attributed in the Negotiation Draft was Arizona Dialtone's position, please see the  
2 Affidavit of Larry Christensen, attached hereto, marked as Reply Brief Attachment A  
3 ("Christensen Affidavit"). Attached to the Christensen Affidavit is a negotiation draft Arizona  
4 Dialtone sent to Qwest on May 18, 2006 (referred to herein as the "Negotiation Draft"). The  
5 important thing to note about the Negotiation Draft is Section 2.3., on pages 9-10 of Exhibit 3 to  
6 the Christensen Affidavit Attachment A). There, Arizona Dialtone proposed:

7       After execution of this Amendment, except for UNEs required to be offered under  
8       Section 271 of the Act, Qwest shall back bill the FCC ordered rate increases to  
9       March 11, 2005, for existing Non-Impaired DS1 Loop and Transport, DS3 Loop  
10       and Transport, Dark Fiber Loop and Transport and Mass Market Switching  
11       Services pursuant to Transition rate increases identified in Sections 3.1.1.2,  
12       3.1.2.2, 3.1.5.1, 4.1.1.2, 4.1.2.2, 4.1.7.1.2 and 5.1.1.3. Such back billing shall not  
13       be subject to billing measurements and penalties. (Emphasis added).

14       Section 5.1.1.3 provides for FCC-ordered "plus \$1" rate to be charged during the transition  
15       period, and was not changed by Arizona Dialtone in that draft. It's clear that Arizona Dialtone's  
16       claimed certainty over what it said it would never agree to is at best, a false memory.

17       E.   Contrary to Arizona Dialtone's Assertions That It Cannot Be Liable For Back-  
18       billing, It Previously Proposed A TRRO Amendment With Back-Billing Provided  
19       For Post Transition Periods.

20       Arizona Dialtone struggles to make arguments against its liability for back-billing of the  
21       difference between the rate Qwest billed and the rate Arizona Dialtone should have been paying  
22       for resale service or QPP service. That struggle is doomed because the pleadings show that  
23       Qwest informed Arizona Dialtone early and often that back-billing would be forthcoming.  
24       Additionally, in the same Negotiation Draft referred to above, Arizona Dialtone submitted a  
25       proposal that states:

26       For all UNEs that Qwest is required to offer under Section 271 of the Act, instead  
27       of back billing CLEC the FCC rate increases to March 11, 2005, as provided in  
28       Paragraph 2.3 above. Qwest shall instead refund to CLEC any amounts above the  
29       newly established rates that CLEC paid for all such UNEs back to March 11, 2005.<sup>4</sup>

30       This demonstrates that in the May, 2006 timeframe was Arizona Dialtone was talking about

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<sup>4</sup> Negotiation Draft, Arizona Dialtone proposed language, section 2.3, p. 10.

1 back-billing, and was seeking to have a back-billing arrangement that could either produce a  
2 credit or higher charge, depending on the outcome of its theory that low cost unbundled platform  
3 services would be made available under Section 271 of the Act.

4 Further, it in the same Negotiation Draft, Arizona Dialtone did not strike or propose  
5 alternative language to Qwest's language regarding back-billing for the difference between the  
6 UNE rates and the rates for the Qwest alternative services arrangements, back to March 11,  
7 2006. Those clauses appear in the Negotiation Draft as Sections 5.1.1.5.2 and 5.1.1.5.3. Section  
8 5.1.1.5.3 provides:

9 5.1.1.5.3 All other Mass Market UNE-P services, including UNE-P  
10 Centrex, Plus/Centron, UNE-P ISDN BRI, UNE-P PAL, UNE-P PBX: Absent  
11 CLEC Transition within ninety (90) days after the execution of this Amendment,  
12 Qwest will convert services to the equivalent Qwest Local Exchange Resale  
13 services. CLEC is subject to back billing for the difference between the rates for  
14 the UNEs and rates for the Qwest alternative service arrangements to March 11,  
15 2006. CLEC is also responsible for all non-recurring charges associated with  
16 such conversions.

17 Arizona Dialtone thought that the alternative services arrangements would turn out to be  
18 Commission-ordered Section 271 UNE rates, similar to the rates the Commission had ordered on  
19 an interim basis in the Covad / Qwest Arbitration, Decision No. 68440 (the "Covad Arbitration  
20 Decision"). As the exchange of emails shows, that question was pending on appeal before the  
21 U.S. District Court. The point, however, is that back-billing was a feature of the discussions  
22 from both sides. That disproves Arizona Dialtone's principal contention—that there was "an  
23 alternative arrangement" for a rate that would not be subject to subsequent true-up.

24 F. Arizona Dialtone's Own Filing Demonstrates That There Was Never Any  
25 "Alternative Arrangement" For An Interim Rate That Is Not Subject to Subsequent  
26 True-Up

27 As stated above, the Negotiation Draft redline proposed by Arizona Dialtone proves that  
28 Arizona Dialtone clearly contemplated that there would be some other rate that would be applied  
29 to the unconverted services it was receiving from Qwest, and that there would be a back-billing,  
30 or true-up, to charge (or, as they hoped, credit) Arizona Dialtone for the difference between the

1 UNE rate Qwest was charging on an interim basis, and the ultimate rate. Arizona Dialtone also  
2 makes a number of statements and provides copies of emails, which prove that: (a) there was an  
3 ongoing, never-resolved disagreement about what rate should apply;<sup>5</sup> (b) Arizona Dialtone  
4 specifically proposed that the parties should agree to continue with UNE-P on an interim basis  
5 instead of entering a TRRO amendment;<sup>6</sup> and (c) Qwest pointedly refused to enter into such an  
6 interim agreement. Qwest's Vice President Steve Hansen was unequivocal:

7 Qwest is not willing to handle the issues between our companies as a one off or  
8 on an interim basis. . . . Arizona Dialtone is still trying to receive UNE pricing  
9 on its services with no end in sight. . . . Qwest will not continue to provide  
Arizona Dialtone with services under UNE-P until Qwest's matter with CoVad is  
resolved.<sup>7</sup>

10 None of that history supports Arizona Dialtone's claim that Qwest relented or relinquished its  
11 rights. That history describes an ongoing fundamental disagreement rather than an "alternative  
12 arrangement."<sup>8</sup> Instead of showing that there was an "alternative arrangement," the history  
13 shows that Arizona Dialtone was put on direct notice that it could not rely on there being no day  
14 of reckoning.

15 G. Qwest's Decision That It Would Not Unilaterally Disconnect Arizona Dialtone's  
16 UNE-P Circuits, And Qwest's Continuation of UNE-P Billing, Proves Only That  
17 Qwest Respected the Interconnection Agreement, And Continued to Rely On the  
Change of Law Provisions; Arizona Dialtone Did Not.

18 Despite the fact that Qwest explicitly rejected Arizona Dialtone's request that UNE-P be  
19 provided as an interim measure without true-up, Arizona Dialtone would have this Commission  
20 believe that Qwest nevertheless agreed to do that very thing, as evidenced by course of conduct.  
21 That argument tries to turn the situation on its head. Qwest's reading of the *TRRO* from its  
22 inception was that the *TRRO* had to be implemented through modifications to the ICAs between  
23 the ILECs and the CLECs under the change of law provisions of the ICAs. The *TRRO* states:

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24 <sup>5</sup> Bade Affidavit, p. 3.

25 <sup>6</sup> *Id.*, p. 2.

26 <sup>7</sup> Bade Affidavit, Exhibit 1.

<sup>8</sup> *Id.*

1 UNE-P arrangements no longer subject to unbundling shall be subject to true-up  
2 to the applicable transition rate upon the amendment of the relevant  
3 interconnection agreements, including any applicable change of law processes.<sup>9</sup>

4 The FCC also stated:

5 Consequently, carriers have twelve months from the effective date of this Order to  
6 modify their interconnection agreements, including completing any change of law  
7 processes.<sup>10</sup>

8 Accordingly, Qwest decided that it should work with the CLECs to modify their ICAs within the  
9 change of law process of the ICAs. Qwest presumed the CLECs would act in good faith, even to  
10 the extent that when CLECs such as Arizona Dialtone did not convert their UNE-P circuits  
11 during the transition period established by the FCC, Qwest continued to honor the existing  
12 obligation, in the belief that the change of law would likewise be honored by the CLECs, and as  
13 a corollary that back-billing would make Qwest whole when the conversions were completed.  
14 Arizona Dialtone is the only CLEC to say that Qwest has given up its rights because of its good  
15 faith effort to implement the *TRRO* and to balance that implementation with proper respect for  
16 and adherence to the procedures set forth in the parties' ICA. The outright silliness of Arizona  
17 Dialtone's "course of conduct" argument is further demonstrated by its assertion that Qwest  
18 could have unilaterally disconnected Arizona Dialtone, and therefore Qwest must have  
19 relinquished its rights.<sup>11</sup> There is no doubt that this Commission would not permit Qwest to  
20 terminate a CLEC's UNE circuits without Commission approval because of a dispute over  
21 change of law.

22 Arizona Dialtone points to Qwest's 2007 decision to stop accepting new orders for UNE-  
23 P, and to stop allowing changes and modifications to existing UNE-P circuits, as evidence for the  
24 proposition that Qwest's provision of UNE-P to that time was voluntary, thus showing that  
25 Qwest's actions amount to a waiver of its rights.<sup>12</sup> First, contrary to the impression left by

26 <sup>9</sup> *TRRO*, fn. 630. (Emphasis added).

<sup>10</sup> *TRRO*, ¶ 227. (Emphasis added).

<sup>11</sup> Arizona Dialtone's Opposition, p. 8-9; see esp. fn. 2.

<sup>12</sup> Arizona Dialtone's Opposition, p. 9, lines 4-12.

1 Arizona Dialtone, Qwest did not change the way it billed Arizona Dialtone for switching  
2 services. As explained by Larry Christensen in the Christensen Affidavit (p.3), all Qwest did  
3 was to tell Arizona Dialtone it would not accept new orders, or accept any changes or  
4 modifications to existing orders, and that Qwest would treat such new orders as a request for  
5 resale services. Qwest continues to bill the remaining embedded base of circuits at the old UNE  
6 rate, to this day. Second, in the notice Qwest sent, Qwest reiterated that it was not relinquishing  
7 back-billing. A copy of the notice, which is a letter from Larry Christensen of Qwest to Mr.  
8 Bade, dated May 23, 2007, is attached to the Christensen Affidavit, marked as Exhibit 4 thereto.  
9 In the very notice that Arizona Dialtone thinks is a change of Qwest position on the main issue of  
10 this case, Qwest said:

11 Qwest reminds Arizona Dial Tone that retroactive billing will apply to all Arizona  
12 Dial Tone UNE-P lines that were in service after March 11, 2005. The retroactive  
13 billing will include the FCC's \$1.00/port mandated transition period rate increase  
14 from March 11, 2005 through March 10, 2006. It will also include rate  
15 differences, beginning March 10, 2006, between UNE-P service and any Qwest  
16 alternative service to which Arizona Dial Tone transitions. Arizona Dial Tone's  
17 liability for this retroactive billing continues to grow.

18 The action Qwest took in May, 2007, which was limited to refusing new orders or  
19 changes to existing orders only, was in Qwest's view permitted by then-recent federal court  
20 interpretations of the FCC's TRRO, which emboldened Qwest to believe it did not need a change  
21 of law amendment to deny such orders. As expressed by a letter from Qwest's counsel to  
22 Arizona Dialtone's counsel, dated May 31, 2007, District courts in Georgia, Kentucky and  
23 Mississippi and the Court of Appeals for the Eleventh Circuit had at that time confirmed that the  
24 FCC's ban on new UNE-P orders was self executing. A copy of said letter is attached as Exhibit  
25 5 to the Christensen Affidavit.

26 Thus, it is clear that Qwest's actions in this matter are consistent with the position it took  
from the beginning—Qwest would follow the change of law provisions of the ICA. Arizona  
Dialtone's argument that Qwest's actions were in derogation of its own rights are so flimsy that  
they do not bear hearing. The Commission should grant Qwest's Motion.



1  
2 **III. REPLY TO COMMISSION STAFF'S COMMENTS**  
3

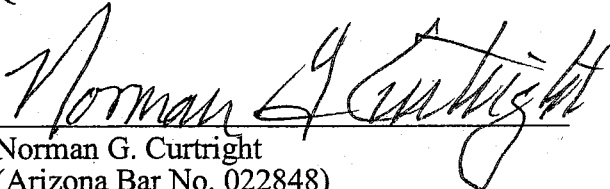
4 The Staff's Comments were written before Arizona Dialtone filed its Opposition;  
5 therefore, the Staff was unaware that Arizona Dialtone is now willing to convert its remaining  
6 UNE-P circuits within thirty days, that Arizona Dialtone now is willing to pay the resale rate  
7 upon conversion, and that Arizona Dialtone has forgone all issues except its claim that Qwest  
8 waived its rights to the preclusion of Arizona Dialtone liability for retroactive billing. For the  
9 reasons stated above, no reading of the facts alleged supports that argument.  
10

11 **IV. CONCLUSION**  
12

13 For the foregoing reasons, Qwest's Motion for Judgment on the Pleadings should  
14 immediately be granted in its entirety.

15 RESPECTFULLY SUBMITTED this 29th day of February, 2008.  
16

17 QWEST CORPORATION

18   
19

20 Norman G. Curtright  
21 (Arizona Bar No. 022848)  
22 20 E. Thomas Rd., 16<sup>th</sup> Floor  
23 Phoenix, Arizona 85012  
24 Tel: (602) 630-2187  
25 Fax: (303) 383-8484  
26 Email: [norm.curtright@qwest.com](mailto:norm.curtright@qwest.com)

1 ORIGINAL and 13 copies hand-delivered  
2 for filing this 29th day of February, 2008, to:

3 Docket Control  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington Street  
6 Phoenix, AZ 85007

7 Copy of the foregoing hand delivered  
8 this 29th day of February, 2008, to:

9 Sarah Harpring, Administrative Law Judge  
10 Hearing Division  
11 ARIZONA CORPORATION COMMISSION  
12 1200 W. Washington  
13 Phoenix, AZ 85007

14 Armando Fimbres  
15 Utilities Division  
16 ARIZONA CORPORATION COMMISSION  
17 1200 W. Washington Street  
18 Phoenix, AZ 85007

19 Maureen A. Scott, Esq.  
20 Legal Division  
21 ARIZONA CORPORATION COMMISSION  
22 1200 W. Washington Street  
23 Phoenix, AZ 95007

24 Copy of the foregoing mailed  
25 this 29th day of February, 2008, to:

26 Tom Bade  
President—Arizona Dialtone, Inc.  
115 S. Kyrene Rd, Suite 103  
Tempe, AZ 85283

Claudio E. Iannitelli, Esq.  
Cheifetz, Iannitelli & Marcoline P.C.  
1850 North Central Avenue, 19<sup>th</sup> Floor  
Phoenix, Arizona 85004

*Diane Kypar*

# **ATTACHMENT A**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

**MIKE GLEASON**  
Chairman  
**WILLIAM MUNDELL**  
Commissioner  
**JEFF HATCH-MILLER**  
Commissioner  
**KRISTIN MAYES**  
Commissioner  
**GARY PIERCE**  
Commissioner

**IN THE MATTER OF THE FORMAL  
COMPLAINT OF QWEST  
CORPORATION AGAINST ARIZONA  
DIALTONE, INC. TO ENFORCE ITS  
INTERCONNECTION AGREEMENT**

**DOCKET NO. T-01051B-07-0694  
T-03608A-07-0694**

**AFFIDAVIT OF LARRY CHRISTENSEN IN SUPPORT OF  
QWEST'S MOTION FOR JUDGMENT ON THE PLEADINGS**

My name is Larry Christensen, and I am competent to testify based on first-hand knowledge and my experience in the telecommunications industry to the following facts.

1. I currently am employed by Qwest Corporation ("Qwest").
2. For more than 38 years, I have worked for Qwest and its predecessors and affiliates, covering my entire career. During that time I have worked in many different departments within the various organizations.
3. Since 2001, I have served as the Director of Legal Issues – Wholesale Markets. In that role, my responsibilities include supervision of a team of negotiators and support personnel who are responsible for negotiating and administering wholesale agreements between Qwest and its wholesale customers, the vast majority of which are section 252 Interconnection Agreements with competitive local exchange carriers ("CLECs").

4. As part of my role, I have responsibility for working with CLECs to implement the Triennial Review Order ("TRO") and Triennial Review Remand Order ("TRRO") and negotiate language of the Qwest Platform Plus ("QPP") service offer.

5. As part of my responsibilities I monitor, receive, and am generally aware of the nature of negotiations with CLECs, including receiving copies of correspondence that I may not have authored. The dispute Qwest has had with Arizona Dialtone about implementation of the TRRO and negotiation of a QPP agreement is a matter about which I am very familiar and have been directly involved, and with respect to which I have maintained files.

6. After release of the TRRO, Qwest did not "encourage" CLECs to order UNE-P services. Rather, Qwest notified CLECs, including Mr. Bade with Arizona Dialtone, via an email on March 4, 2005, that they could continue to process new, conversion, and change service orders requests for the impacted UNEs to the extent required by their existing ICA as shown in LTC Affidavit Exhibit 1. Qwest did so because it believed it had an obligation under the existing interconnection agreements to continue to process orders while the parties negotiated to amend the agreement pursuant to the change of law requirements of the agreement as ordered by the FCC in paragraph 228 of the TRRO. Qwest believed it would not be appropriate to unilaterally stop accepting orders. Qwest made it abundantly clear that existing and any new services would be subject to the rate true-up. This is clear both in LTC Affidavit Exhibit 1 and in the TRRO amendment "Qwest" provided each CLEC, in sections 2.3 and the sections referenced therein. I also personally explained this position to Mr. Bade.

7. Attached hereto, marked as LTC Affidavit Exhibit 2, is a copy of an email Tom Bade of Arizona Dialtone sent on May 18, 2006, to Qwest Vice President Steve Hansen, with a copy to me. With that email, after over a year of communications and negotiations and multiple requests to see specific language proposals from Arizona Dialtone, Mr. Bade transmitted Arizona Dialtone's first redlined version of Qwest's form TRRO Amendment which is attached hereto, marked as LTC Affidavit Exhibit 3. Arizona Dialtone's proposed wording in the attached negotiation draft is underlined. Arizona Dialtone agreed to back billing as shown by section 2.3 and 5.1.1.3 of LTC Affidavit Exhibit 3.

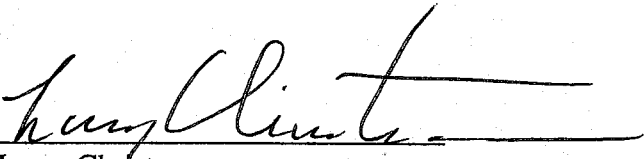
8. Attached hereto, marked as LTC Affidavit Exhibit 4, is a copy of a letter I wrote to Tom Bade of Arizona Dialtone on May 23, 2007. The purpose of that letter was to notify Arizona Dialtone that Qwest would not accept new orders for UNE-P, or any change orders for UNE-P circuits already in service. However, UNE-P circuits that were in place and that were not modified by a request from Arizona Dialtone would be left intact, and billed at the pre-TRRO rate, pending execution of a TRO/TRRO amendment which included language of retroactive billing true-up.

9. Also attached hereto, marked as LTC Affidavit Exhibit 5, is a copy of a letter written on May 31, 2007 by Qwest attorney Andrew Creighton to Arizona Dialtone's counsel, explaining that certain court decisions interpreting the TRRO clarified that the TRRO's requirement that CLECs may not order new mass market switching (including UNE-P) was self-executing; which Qwest interpreted to mean that Qwest was not required to accept new UNE-P orders.

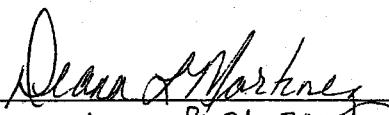
10. I point out that in both letters Qwest was very clear that Qwest's billings at the UNE-P rate is subject to back-billing true up. Qwest has maintained that position consistently.

Further Affiant Sayeth Not

Dated: February 28, 2008

  
Larry Christensen

Subscribed and sworn to me  
This 28th day of February 2008

Notary Public   
My Commission expires: 8-21-2010

---

**LTC AFFIDAVIT  
EXHIBIT 1**





March 4, 2005

Tom Bade  
Arizona Dialtone  
6155 E. Indian School Road  
Scottsdale, Arizona 85251

To: Tom Bade

<b>Announcement Date:</b>	<b>March 4, 2005</b>
<b>Effective Date:</b>	<b>Immediately</b>
<b>Document Number:</b>	<b>PROD.03.04.05.A.001317.TRO_Remand_UNE_Availability</b>
<b>Notification Category:</b>	<b>Product Notification</b>
<b>Target Audience:</b>	<b>CLECs</b>
<b>Subject:</b>	<b>Triennial Review Remand Order UNE Availability Impacts</b>

As you know, on February 4, 2005, the FCC released the *Triennial Review Remand Order* (FCC 04-290) ("*Remand Order*"), which modified the rules governing Qwest's obligation to make certain unbundled network elements (UNEs) available under Section 251(c)(3) of the Communications Act of 1934, as amended ("Act"). For those impacted UNEs, the *Remand Order* includes a moratorium on new orders, certain rate changes, and the requirement to migrate most services to alternative arrangements before March 11, 2006.<sup>1</sup>

The regulatory changes in the *Remand Order*, and the March 11, 2005, effective date of the *Remand Order* have caused uncertainty among the CLEC community regarding Qwest's implementation plans. At this time, Qwest intends to negotiate ICA amendments reflecting the new requirements of both the *Triennial Review Order* ("*TRO*") and *Remand Order* before implementing the changes in those Orders. The FCC expects ICA Amendments necessary to implement the *Remand Order* to be executed no later than March 11, 2006.

Prior to the effective date of a new or amended ICA incorporating the changes required by the *TRO* and *Remand Order*, the terms, conditions, and pricing of your existing ICA will govern. At the time your ICA Amendment is executed:

All existing impacted UNEs will be subject to the transition periods established in the Remand Order. ICA Amendments will include a "true up" to the FCC-mandated transitional rate (\$1.00 per port for UNE switching, including UNE-P, 2 15% for DS1, DS3, and Dark Fiber loops and transport), retroactive to March 11, 2005, in those areas where the FCC has found a lack of impairment with respect to the affected UNEs. Attached is a list that identifies the Qwest wire centers that meet the "Tier 1" and "Tier 2" requirements of the Remand Order, and those that satisfy the non-impairment thresholds for DS1 and DS3 loops. Complete lists identifying those Qwest wire centers that meet the non-impairment criteria established in the Remand Order have

been posted to the Qwest Wholesale web site at:  
<http://www.qwest.com/wholesale/clecs/sgatswireline.html>

Qwest will continue to process new, conversion, and change service orders requests for impacted UNEs to the extent required by your existing ICA. Any new services provisioned after March 11, 2005, will be subject, at a minimum, to the same price true-up provisions applicable to pre-existing UNEs that are described above.

Qwest reserves the right to modify this policy upon written notice in the event that intervening events lead to a different interpretation of the *Remand Order* requirements. Such changes will be prospective only and will not disrupt the use of any UNE that is operational at the time of the change in policy.

We look forward to working with our CLEC partners within the new framework required by the Remand Order and will soon be contacting you to begin the ICA Amendment process. Additionally, your Qwest Representative stands ready to answer any questions you may have and to assist you in determining alternative arrangements for those services that have been impacted by the TRO and/or Remand Order.

Qwest appreciates being your wholesale provider of choice in the highly competitive telecommunications landscape

Sincerely,

Steve Hansen  
Carrier Relations

**LTC AFFIDAVIT  
EXHIBIT 2**

-----Original Message-----

**From:** Tom Bade [mailto:tombade@arizonadialtone.com]

**Sent:** Thursday, May 18, 2006 3:03 PM

**To:** Hansen, Steve (Wholesale)

**Cc:** Bill Cleaveland; Christensen, Larry

**Subject:** TRRO Dispute Resolution

Steve,

Please disregard the previous email as the attachment was missing. When we last spoke, you had indicated that we would be talking soon. Since you haven't called, I thought I would take Larry's suggestion to mark up the amendment, which I have attached. As you go through it, you will see that there are some missing attachments but we feel that as marked it better reflects our position and would make a good place to resolve our disputes. We, of course, would need to see the missing attachments.

After you have a chance to read it over, please give me a call so we can discuss further. Your attention to this matter is greatly appreciated.

Tom

P.S. Could you forward to Mr. Creighton as I do not have his email address.

**LTC AFFIDAVIT  
EXHIBIT 3**

**Triennial Review Order and Triennial Review Remand Order  
("TRO/TRRO") Amendment  
to the Interconnection Agreement between  
Qwest Corporation and  
COMPANY  
for the State of  
STATE**

This is an Amendment ("Amendment") to incorporate the Triennial Review Order ("TRO") and the Triennial Review Remand Order ("TRRO") into the Interconnection Agreement between Qwest Corporation ("Qwest"), formerly known as U S WEST Communications, Inc., a Colorado corporation, and COMPANY ("CLEC"). CLEC and Qwest shall be known jointly as the "Parties".

**RECITALS.**

WHEREAS, CLEC and Qwest entered into an Interconnection Agreement (such Interconnection Agreement, as amended to date, being referred to herein as the "Agreement") for services in the state of STATE which was approved by the STATE Commission ("Commission"); and

WHEREAS, the Federal Communications Commission ("FCC") promulgated new rules and regulations pertaining to, among other things, the availability of unbundled network elements ("UNEs") pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (the "Act") in its Report and Order *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 and 98-147, (effective October 2, 2003) ("TRO"); and

WHEREAS, on February 4, 2005, the FCC released the *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Order on Remand* (Triennial Review Remand Order)(FCC 04-290) ("TRRO"), effective March 11, 2005, which further modified the rules governing Qwest's obligation to make certain UNEs available under Section 251(c)(3) of the Act; and

WHEREAS, the TRO and TRRO Decision, individually and together ("Decisions") materially modify Qwest's obligations under the Act with respect to, among other things, Qwest's requirement to offer certain UNEs under Section 251; and

WHEREAS, the Decissions notwithstanding, Qwest remains obligated to offer certain UNEs under Section 271 of the Act and other applicable law; and

WHEREAS, CLEC and Qwest desire to have an understanding of billing disputes, ICA interpretation, clarification and effective dates; and

WHEREAS, the Parties wish to amend the Agreement to comply with the Decisions hereby agree to do so under the terms and conditions contained herein.

**AGREEMENT**

NOW THEREFORE, in consideration of the mutual terms, covenants and conditions contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

#### **I. Amendment Terms.**

To the extent applicable, the Agreement is hereby amended by deleting certain UNEs or by changing or adding terms and conditions for certain UNEs as set forth in Attachment 1 and Exhibit A to this Amendment THERE IS NO "EXHIBIT A" ATTACHED; PLEASE CLARIFY THIS TERM?, attached hereto and incorporated herein by this reference.

Qwest agrees not to bill CLEC for any Operator Services or 1+ toll under this agreement. Qwest agrees to pay CLEC a commission equal to the commission paid to it's highest paid aggregator for Operator Services billed to CLEC's end users. Qwest agrees not to bill CLEC for any charges on behalf of any other IXC or other company under any billing agreement Qwest may or may not have with a third party. Qwest agrees to file, within 60 days, it's discount for finished Public Access Lines in Colorado to reflect it's avoided cost in order to comply with FCC regulations and to refund CLEC for past 2 years within 30 days. Qwest agrees to properly identify DUF records with the proper CIC codes for CLEC DUF RECORDS to bill locally ported 800 calls to IXC and prepaid companies PRI lines and agrees that such traffic is not locally terminated and is not "bill and keep" traffic. Qwest agrees that Qwest will no longer bill CLEC for dial up ISP traffic from CLEC end users and that it is "Bill and Keep" traffic. Qwest will not bill CLEC for end user line charges on resold finished Qwest lines. Qwest agrees to pay \$25.00 per person hour for correcting Qwest billing errors.

Qwest and CLEC agree to extend the existing ICA for three years from the date of approval of this amendment after which ICA 5.2 will govern.

#### **II. Limitations.**

Nothing in this Amendment shall be deemed an admission by Qwest or CLEC concerning the interpretation or effect of the Decisions, nor rules, regulations, interpretations, and appeals thereof, including but not limited to state rules, regulations, and laws as they may be issued or promulgated regarding the same. Nothing in this Amendment shall preclude or estop Qwest or CLEC from taking any position in any forum concerning the proper interpretation or effect of Decisions or concerning whether the Decisions should be changed, vacated, dismissed, stayed or modified.

#### **III. Conflicts.**

In the event of a conflict between this Amendment and the terms and conditions of the Agreement, this Amendment shall control, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement shall not be interpreted as, or deemed a grounds for finding, a conflict for purposes of this Section III.

#### **IV. Scope.**

This Amendment shall amend, modify and revise the Agreement only to the extent the UNEs listed in Attachment 1 are included in the Agreement and, except to the extent set forth in Section I and Section II of this Amendment, the terms and provisions of the Agreement shall remain in full force and effect after the execution date.

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**V. Effective Date.**

This Amendment shall be deemed effective upon approval by the Commission, ~~The Parties~~ agree to implement the provisions of this Amendment upon execution ("execution date").

Deleted: except where the change of law provision in CLEC's Interconnection Agreement specifies a different effective date.

**VI. Further Amendments.**

The provisions of this Amendment, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions of this Amendment may not be given without the written consent thereto by both Parties' authorized representative. No waiver by any Party of any default, misrepresentation, or breach of warranty or covenant hereunder, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation, or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence.



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Deleted: Entire Agreement

Deleted: The Agreement as amended (including the documents referred to herein) constitutes the full and entire understanding and agreement between the Parties with regard to the subjects of the Agreement as amended and supersedes any prior understandings, agreements, or representations by or between the Parties, written or oral, to the extent they relate in any way to the subjects of the Agreement as amended.¶

**VII. Counterparts.**

The Parties intending to be legally bound have executed this Amendment as of the dates set forth below, in multiple counterparts, each of which is deemed an original, but all of which shall constitute one and the same instrument.

**COMPANY**

**Qwest Corporation**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed/Typed

\_\_\_\_\_  
L.T. Christensen  
Name Printed/Typed

\_\_\_\_\_  
Title

\_\_\_\_\_  
Director- Interconnection Agreements  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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## 1.0 Definitions

"Business Line" means a Qwest-owned switched access line used to serve a business customer, whether by Qwest itself or by CLEC that leases the line from Qwest. The number of Business Lines in a Wire Center shall equal the sum of all Qwest business switched access lines, plus the sum of all UNE loops connected to that Wire Center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, Business Line tallies (1) shall include only those access lines connecting End User Customers with Qwest end-offices for switched services; (2) shall not include non-switched special access lines; and (3) shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to twenty-four (24) 64 kbps-equivalents, and therefore to twenty-four (24) Business Lines.

"Commingling" means the connecting, attaching, or otherwise linking of an Unbundled Network Element, or a Combination of Unbundled Network Elements, to one or more facilities or services that a requesting Telecommunications Carrier has obtained at wholesale from Qwest, or the combination of an Unbundled Network Element, or a Combination of Unbundled Network Elements, with one or more such facilities or services.

"Commingle" means the act of Commingling.

"Dark Fiber" is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

"Dedicated Transport" is Qwest transmission facilities between wire centers or switches owned by Qwest, or between wire centers or switches owned by Qwest and switches owned by requesting telecommunications carriers, including, but not limited to, DS1-, DS3-, and OCn-capacity level services, as well as dark fiber, dedicated to a particular customer or carrier.

"Fiber-based Collocator" means any carrier, unaffiliated with Qwest, that maintains a Collocation arrangement in a Qwest Wire Center, with active electrical power supply, and operates a fiber-optic cable or comparable transmission facility that (1) terminates at a Collocation arrangement within the Wire Center; (2) leaves the Qwest Wire Center premises; and (3) is owned by a party other than Qwest or any affiliate of Qwest, except as set forth in this paragraph. Dark fiber obtained from Qwest on an indefeasible right of use basis shall be treated as non-Qwest fiber-optic cable. Two (2) or more affiliated Fiber-based Collocators in a single Wire Center shall collectively be counted as a single Fiber-based Collocator. For purposes of this paragraph, the term "affiliate" is defined by 47 U.S.C. § 153(1) and any relevant interpretation in this Title.

"Interexchange Service" means telecommunications service between stations in different exchange areas. Cf. Modification of Final Judgment, § IV(K), *reprinted in United States v. Am. Tel. & Tel. Co.*, 552 F. Supp. 131, 229 (D.D.C. 1982) (defining "interexchange telecommunications" as "telecommunications between a point or points located in one exchange telecommunications area and a point or points located in one or more other exchange areas or a point outside an exchange area").

"Long Distance Service" (see "Interexchange Service").

"Mobile Wireless Service" means all mobile wireless telecommunications services, including commercial mobile radio service (CMRS). CMRS includes paging, air-ground radio, telephone service and offshore radiotelephone services, as well as mobile telephony services, such as the vice offerings of carriers using cellular radiotelephone, broadband PCS and SMR licenses.

"Non-impaired Wire Center" – A Non-impaired Wire Center is a Wire Center that meets the loop thresholds identified in CFR 47 §51.319(a)(4)(i) for DS1 Loops and §51.319(a)(5)(i) for DS3 Loops. Non-impaired Wire Centers also include Tier 1 and Tier 2 Wire Centers as defined in §51.319(e)(3) and subject to the limitations of §51.319(e)(2)(ii)(A) for DS1 Dedicated Transport, §51.319(e)(2)(iii)(A) for DS3 Dedicated Transport and §51.319(e)(2)(iv)(A) for Dark Fiber Transport.

"Route" is a transmission path between one of Qwest's Wire Centers or switches and another of Qwest's Wire Centers or Switches. A Route between two (2) points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") may pass through one (1) or more intermediate Wire Centers or Switches (e.g., Wire Center or Switch "X"). Transmission paths between identical end points (e.g., Wire Center or Switch "A" and Wire Center or Switch "Z") are the same "route," irrespective of whether they pass through the same intermediate Wire Centers or Switches, if any.

"Triennial Review Remand Order" The Triennial Review Remand Order is the Commission's Order on Remand in CC Docket Nos. 01-338 and 04-313 (released February 4, 2005).

"Unbundled Network Element" (UNE) is a Network Element that has been defined by the FCC as a Network Element to which Qwest is obligated under Section 251(c)(3) of the Act to provide unbundled access or for which unbundled access is provided under CLEC's Agreement and under this Amendment. Unbundled Network Elements do not include those Network Elements Qwest is obligated to provide only pursuant to Section 271 of the Act.

"Wire center" A wire center is the location of a Qwest local Switching facility containing one or more central offices, as defined in the Appendix to part 36 of this chapter. The wire center boundaries define the area in which all customers served by a given wire center are located.

"Tier 1 Wire Centers" means those Qwest Wire Centers that contain at least four Fiber-based Collocators, at least 38,000 Business Lines, or both. Tier 1 Wire Centers also are those Qwest tandem Switching locations that have no line-side Switching facilities, but nevertheless serve as a point of traffic aggregation accessible by CLEC. Once a Wire Center is determined to be a Tier 1 Wire Center, that Wire Center is not subject to later reclassification as a Tier 2 or Tier 3 Wire Center.

"Tier 2 Wire Centers" means those Qwest Wire Centers that are not Tier 1 Wire Centers, but contain at least 3 Fiber-based Collocators, at least 24,000 Business Lines, or both. Once a Wire Center is determined to be a Tier 2 Wire Center, that Wire Center is not subject to later reclassification as a Tier 3 Wire Center.

"Tier 3 Wire Centers" means those Qwest Wire Centers that do not meet the criteria for Tier 1 or Tier 2 Wire Centers.

## 2.0 Unbundled Network Elements (UNE) General

2.1 CLEC's Interconnection Agreement may include terms and conditions for certain Network Elements that Qwest is no longer required to offer on an unbundled basis pursuant to Section 251 of the Act. The FCC determined in its Decisions, that certain Unbundled Network Elements no longer satisfy the FCC's impairment test, and as a result, Qwest is no longer obligated to offer to CLEC those Network Elements on an unbundled basis pursuant to Section 251 of the Act. The FCC also modified certain Terms and Conditions for other Unbundled Network Elements.

2.2 As of the execution date of this Amendment, CLEC shall not order, and Qwest will not provide, the following Network Elements on an unbundled basis pursuant to Section 251 of the Act: Instead, all such Network Elements shall be ordered and provided pursuant to Section 271 of the Act.

### 2.2.1 Unbundled Loops

- a) Certain DS1 Loops subject to the requirements of Section 3.0 following
- b) Certain DS3 Loops subject to the requirements of Section 3.0 following
- c) OCn Loops
- d) FTTH & FTTC Loops subject to the requirements of Section 3.1.6 following
- e) Dark Fiber Loops subject to the requirements of Section 3.1.5 following
- f) Hybrid Loops (non-copper distribution Loops) except as identified in Section 3.1.7 following
- g) Line Sharing
- h) Feeder-Sub-Loop
- i) Shared Distribution Loops

### 2.2.2 Transport

- a) E-UDIT (Extended Unbundled Dedicated Interoffice Transport); Transport from a CLEC's Premises to a Qwest Wire Center;
- b) E-UDF (Extended Unbundled Dark Fiber); Transport from a CLEC's Premises to a Qwest Wire Center;
- c) OCn UDIT; including Remote Node/Remote Port and SONET add/drop multiplexing

- d) UDIT and UDF as a part of a Meet-Point arrangement;
- e) Certain DS1 Transport (UDIT) subject to the requirements of Section 4.0 following
- f) Certain DS3 Transport (UDIT) subject to the requirements of Section 4.0 following
- g) Certain Dark Fiber Transport (UDF-IOF) subject to the requirements of Section 4.1.7 following
- h) Multiplexing associated with UDIT and Loop/Mux Combo

### 2.2.3 Unbundled Switching

- a) Packet Switching
- b) Tandem Switching
- c) Mass Market Switching, including UNE-P and related services as identified in Section 2.2.3.1
- d) Enterprise Local Switching, including UNE-P and related services as identified in Section 2.2.3.1
- e) Signaling Networks (stand alone)

#### 2.2.3.1 Related services

- a) Customized Routing
- b) Signaling
- c) AIN Database Services
- d) Line Information Database (LIDB)
- e) 8XX Database Services
- f) InterNetwork Calling Name (ICNAM)
- g) Local Number Portability (LNP) Database
- h) Shared Transport

### 2.2.4 Transition

2.2.4.1 Transition plans for embedded [unbundled?] Network Elements identified in the above lists are identified in the following sections.

2.3 After execution of this Amendment, except for UNEs required to be offered under Section 271 of the Act, Qwest shall back bill the FCC ordered rate increases to March 11, 2005, for existing Non-Impaired DS1 Loop and Transport, DS3 Loop and Transport, Dark Fiber Loop and Transport and Mass Market Switching Services pursuant to Transition rate increases identified in Sections 3.1.1.2, 3.1.2.2, 3.1.5.1, 4.1.1.2, 4.1.2.2, 4.1.7.1.2 and 5.1.1.3. Such back billing shall not be subject to billing measurements and penalties.

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Additionally, for all UNEs required to be offered under Section 271 of the Act, Qwest shall establish just and reasonable rates for each type and class of such UNEs. The just and reasonable rates for UNEs offered under Section 271 shall be established at a commercially viable wholesale pricing level reasonably proportionate to Qwest's retail pricing for competitive classes of service such that the sum of the rates for all UNEs and all reasonable costs of any additional elements or services that would need to be provided by a CLEC to reasonably approximate Qwest's retail services that Qwest provides to its end user customers, less a reasonable retail markup. If needed, a different rate for UNEs offered under Section 271 shall be established for different classes of service, such as (by way of example but not limitation) residential switching, business line switching, PAL line switching, etc.

For all UNEs that Qwest is required to offer under Section 271 of the Act, instead of back billing CLEC the FCC rate increases to March 11, 2005, as provided in Paragraph 2.3 above, Qwest shall instead refund to CLEC any amounts above the newly established rates that CLEC paid for all such UNE's back to March 11, 2005.

2.4 UNEs shall be obtained solely for the provision of Telecommunications Services and only to the extent allowed by law. Qwest and CLEC are aware of no law presently restricting the UNEs that Qwest may provide.

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2.6 CLEC may not access UNEs for the exclusive provision of Mobile Wireless Services or Interexchange Services.

2.7 If CLEC accesses and uses a UNE consistently with Sections 2.4, 2.5 and 2.6, CLEC may provide any Telecommunications Services over the same UNE.

The following paragraphs 2.8 through 7.0 do not apply to any UNEs required to be offered by Qwest under Section 271 of the Act.

2.8 To submit an order to obtain a high-capacity loop or transport UNE, CLEC must undertake a reasonably diligent inquiry and, based on that inquiry, self-certify that, to the best of its knowledge, its request is consistent with the requirements discussed in parts IV, V, and VI of the Triennial Review Remand Order and that it is therefore entitled to unbundled access to the particular network elements sought pursuant to section 251(c)(3). As part of such reasonably diligent inquiry, CLEC shall ensure that a requested unbundled DS1 or DS3 loop is not in a Wire Center identified on the list provided by Qwest of Wire Centers that meet the applicable non-impairment thresholds specified in Sections 3.1.1 and 3.1.2, and that a requested unbundled DS1, DS3 or dark fiber transport circuit is not between Wire Centers identified on the list of Wire Centers that meet the applicable non-impairment threshold specified in Sections 4.1.1, 4.1.2 and 4.1.7.1.1. CLEC shall provide a letter or other mutually agreed upon form to document its compliance. CLEC will maintain appropriate records that document what CLEC relied upon to support its certification.

2.8.1 Upon receiving a request for access to a dedicated transport or high-capacity loop UNE that indicates that the UNE meets the relevant factual criteria discussed in sections V and VI of the Triennial Review Remand Order, Qwest must immediately process the request, if the UNE is in a location that does not meet the applicable non-

**Deleted:** UNEs shall only be obtained for the provision of Telecommunications Services, which do not include telecommunications utilized by CLEC for its own administrative use.

impairment thresholds referred to in Section 2.8. To the extent that Qwest seeks to challenge any other such UNEs, it subsequently can raise that issue through the dispute resolution procedures provided for in CLEC's Interconnection Agreement.

2.8.2 If it is determined by CLEC and Qwest that CLEC's access to or use of UNEs is inconsistent with Existing Rules, except due to change in law, CLEC has thirty (30) calendar Days to convert such UNEs to alternate service arrangements and CLEC is subject to back billing for the difference between rates for the UNEs and rates for the Qwest alternate service arrangements. CLEC is also responsible for all non-recurring charges associated with such conversions.

2.8.3 When CLEC submits an order to convert a special access circuit to a UNE and that circuit has previously been exempt from the special access surcharge pursuant to 47 CFR 69.115, CLEC shall document in its certification when and how the circuit was modified to permit interconnection of the circuit with a local exchange subscriber line.

2.8.4 Additional Non-Impaired Wire Centers. If additional Qwest Wire Centers are found to meet the relevant factual criteria discussed in Sections V and VI of the FCC's Triennial Review Remand Order under which Qwest is no longer required to offer Unbundled DS1 or DS3 Loops, and/or if additional Qwest Wire Centers are reclassified as Tiers 1 or 2, thus impacting the availability of Unbundled DS1, DS3, or Dark Fiber transport, Qwest shall provide notice to CLEC. Thirty (30) Days after notification from Qwest, CLEC will no longer order impacted high capacity or Dark Fiber UNEs in or between those additional Wire Centers. CLEC will have ninety (90) Days to transition exiting DS1 and DS3 UNEs to an alternative service. CLEC will have one hundred eighty (180) Days to transition Dark Fiber transport to an alternative service. Qwest and CLEC will work together to identify those circuits impacted by such change. Absent CLEC transition of impacted UNEs within the transition period above, Qwest will convert facilities to month-to-month service arrangements in Qwest's Special Access Tariff or begin the disconnect process of Dark Fiber facilities. CLEC is subject to back billing for the difference between the UNE and Tariff rates beginning on the ninety-first (91st) Day as well as for all applicable nonrecurring charges associated with such conversions.

## 2.9 Service Eligibility Criteria

2.9.1 The following Service Eligibility Criteria apply to combinations and/or Commingling of high capacity (DS1 and DS3) Loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions), or new commingled EELs (e.g., high capacity loops attached to special access transport) offered under Section 251 of the Act.

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2.9.1.1 Except as otherwise provided in this Section 2.9.1.1, Qwest shall provide access to Unbundled Network Elements and Combinations of Unbundled Network Elements without regard to whether CLEC seeks access to the Unbundled Network Elements to establish a new circuit or to convert an existing circuit from a service to Unbundled Network Elements.

2.9.1.2 CLEC must certify that the following Service Eligibility Criteria are satisfied to: (1) convert a Special Access Circuit to a high capacity EEL, (2) to



obtain a new high capacity EEL; or (3) to obtain at UNE pricing any portion of a Commingled circuit that includes a high capacity Loop and transport facility or service. Such certification shall be in accordance with all of the following Sections.

2.9.1.2.1 State Certification. CLEC has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

2.9.1.2.2 Per Circuit Criteria. The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 EEL, and each DS1-equivalent circuit on a DS3 EEL:

2.9.1.2.3 Telephone Number Assignment. Each circuit to be provided to each End User Customer will be assigned a local telephone number prior to the provision of service over that circuit. This requires that each DS1 circuit must have at least one (1) local telephone number and each DS3 circuit has at least twenty-eight (28) local telephone numbers. The origination and termination of local voice traffic on each local telephone number assigned to a circuit shall not include a toll charge and shall not require dialing special digits beyond those normally required for a local voice call. CLEC will provide local telephone number assignments by circuit;

2.9.1.2.4 911 or E911. Each circuit to be provided to each End User Customer will have 911 or E911 capability prior to the provision of service over that circuit. CLEC will provide evidence of 911 or E911 capability for each circuit to be provided to each End User Customer.

2.9.1.2.5 Collocation. CLEC will provide evidence that each circuit terminates in a Collocation arrangement by providing the associated CFA. In addition:

2.9.1.2.5.1 Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Qwest's Premises within the same LATA as the End User Customer's premises, when Qwest is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location;

2.9.1.2.5.2 Each circuit to be provided to each End User Customer will terminate in a Collocation arrangement that is located at the third party's premises within the same LATA as the End User Customer's premises, when Qwest is the collocator; and

2.9.1.2.5.3 When a DS1 or DS3 EEL Loop is connected to a multiplexed facility, the multiplexed facility must be terminated in a Collocation arrangement that is established pursuant to Section 251(c)(6) of the Act and located at Qwest's Premises within the same LATA as the End User Customer's premises, when Qwest is not the collocator, and cannot be at an Interexchange Carrier POP or ISP POP location.

2.9.1.2.6 Interconnection Trunking. CLEC must arrange for the meaningful exchange of traffic which must include hand-offs of local voice calls that flow in both directions. Those arrangements that do not include two way LIS trunks cannot be attributed towards satisfaction of this criterion. CLEC will identify the Interconnection trunk(s) satisfying this criterion. At a minimum, each DS1 circuit must be served by a DS0 equivalent LIS trunk in the same LATA and state as the End User Customer served by the circuit. For each twenty-four (24) DS1 circuits, CLEC must maintain at least one (1) active DS1 LIS trunk in the same LATA and state as the End User Customer served by the circuit.

2.9.1.2.6.1 Calling Party Number. Each circuit to be provided to each End User Customer will be served by an Interconnection trunk over which CLEC will transmit the Calling Party Number in connection with calls exchanged over the trunk. For each twenty-four (24) DS1 EELs or other facilities having equivalent capacity, CLEC will have at least one (1) active DS1 LIS trunk over which CLEC will transmit the Calling Party Number in connection with calls exchanged over the trunk. If the Calling Party Number is not exchanged over an Interconnection trunk, that trunk shall not be counted towards meeting this criteria. For each circuit, CLEC will identify the Interconnection trunk satisfying this criterion.

2.9.1.2.7 End Office Switch. Each circuit to be provided to each End User Customer will be served by an End Office Switch capable of Switching local voice traffic. CLEC must certify that the Switching equipment is either registered in the LERG as a Class 5 Switch or that it can switch local voice traffic. CLEC will provide written documentation of the Switch type and CLLI code for the Switch satisfying this criterion.

2.9.1.3 With each order, CLEC must provide certification and the identified supporting information to Qwest through a certification letter, or other mutually agreed upon communication, that each individual high capacity loop in combination, or Commingled, with a Qwest-provided high capacity transport facility or service, meets the Service Eligibility Criteria set forth above before Qwest will provision or convert the high capacity facility in combination or Commingled.

2.9.1.4 CLEC's high capacity combination or Commingled facility Service Eligibility shall remain valid only so long as CLEC continues to meet the Service

Eligibility Criteria set forth above. If CLEC's Service Eligibility on a given high capacity combination or Commingled facility is no longer valid, CLEC must submit a service order converting the facility to the appropriate Private Line/Special Access service within thirty (30) Days.

2.9.1.5 Service Eligibility Audits. In order to confirm reasonable compliance with these requirements, Qwest may perform Service Eligibility Audits of CLEC's records. Service Eligibility Audits shall be performed in accordance with the following guidelines:

2.9.1.5.1 Qwest may, upon thirty (30) Days written notice to CLEC that has purchased high capacity combination and Commingled facilities, conduct a Service Eligibility Audit to ascertain whether those high capacity facilities were eligible for UNE treatment at the time of Provisioning or conversion and on an ongoing basis thereafter.

2.9.1.5.2 CLEC shall make reasonable efforts to cooperate with any Service Eligibility Audit by Qwest and shall maintain and provide Qwest with relevant records (e.g., network and circuit configuration data, local telephone numbers) which demonstrate that CLEC's high capacity combination and Commingled facilities meet the Service Eligibility Criteria.

2.9.1.5.3 An independent auditor hired and paid for by Qwest shall perform any Service Eligibility Audits, provided, however, that if a Service Eligibility Audit reveals that CLEC's high capacity combination and Commingled facility circuit(s) do not meet or have not met the Service Eligibility Criteria, then CLEC shall reimburse Qwest for the cost of the audit. To the extent the independent auditor's report concludes that CLEC complied in all material respects with the Service Eligibility Criteria, Qwest shall reimburse CLEC for its costs associated with the Service Eligibility Audit.

2.9.1.5.4 An independent auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA) and during normal business hours, unless there is a mutual agreement otherwise.

2.9.1.5.5 Qwest shall not exercise its Service Eligibility Audit rights with respect to CLEC (excluding Affiliates), more than once in any calendar year, unless an audit finds non-compliance. If a Service Eligibility Audit does find non-compliance, Qwest shall not exercise its Service Eligibility Audit rights for sixty (60) Days following that audit, and if any subsequent Service Eligibility Audit does not find non-compliance, then Qwest shall not exercise its Service Eligibility Audit rights for the remainder of the calendar year.

2.9.1.5.6 At the same time that Qwest provides notice of a Service Eligibility Audit to CLEC under this paragraph, Qwest shall send a copy of

the notice to the Federal Communications Commission.

2.9.1.5.7 Service Eligibility Audits conducted by Qwest for the purpose of determining compliance with Service Eligibility Criteria shall not effect or in any way limit any audit or Dispute Resolution rights that Qwest may have pursuant to other provisions of this Agreement.

2.9.1.5.8 Qwest shall not use any other audit rights it may have under this Agreement to audit for compliance with the Service Eligibility Criteria of this Section. Qwest shall not require a Service Eligibility Audit as a prior prerequisite to Provisioning combination and Commingled facilities.

2.9.1.5.9 CLEC shall maintain appropriate records to support its Service Eligibility Criteria. However, CLEC has no obligation to keep any records that it does not keep in the ordinary course of its business.

2.9.1.5.10 If a Service Eligibility Audit demonstrates that a high capacity combination and Commingled facilities do not meet the Service Eligibility Criteria above, the CLEC must convert all non-compliant circuits to Private Line/Special Access circuits and CLEC must true-up any difference in payments within thirty (30) days.

### **3.0 Unbundled Loop**

3.1 Unbundled Loops are available pursuant to CLEC's Agreement and the following terms and conditions.

**3.1.1 DS1 Unbundled Loops.** Subject to the cap described in Section 3.1.1.1, Qwest shall provide CLEC with non-discriminatory access to a DS1 loop on an unbundled basis to any building not served by a Wire Center with at least 60,000 Business Lines and at least four (4) Fiber-based Collocators. Once a Wire Center exceeds both of these thresholds, no future DS1 loop unbundling will be required in that Wire Center.

**3.1.1.1 Cap on Unbundled DS1 Loop Circuits.** CLEC may obtain a maximum of ten (10) unbundled DS1 Loops to any single building in which DS1 Loops are available as Unbundled Loops.

**3.1.1.2 Transition period for DS1 loop circuits.** For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS1 loop UNEs that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 3.1.1 or 3.1.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that Loop element. Where Qwest is not required to provide unbundled DS1 loops pursuant to Sections 3.1.1 or 3.1.1.1, CLEC may not obtain new DS1

loops as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

**3.1.1.3 Billing.** The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the Billing Telephone Number (BTN) and/or Circuit (CKT) per Billing Account Number (BAN) with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

**3.1.2 DS3 Unbundled Loops.** Subject to the cap described in Section 3.1.2.1, Qwest shall provide CLEC with non-discriminatory access to a DS3 loop on an unbundled basis to any building not served by a Wire Center with at least 38,000 Business Lines and at least four (4) Fiber-based Collocators. If a Wire Center exceeds both of these thresholds, no future DS3 Loop unbundling is required in that Wire Center.

**3.1.2.1 Cap on Unbundled DS3 Loop Circuits.** CLEC may obtain a maximum of a single unbundled DS3 Loop to any single building in which DS3 Loops are available as unbundled loops.

**3.1.2.2 Transition period for DS3 loop circuits.** For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS3 loop UNEs that a CLEC leases from the Qwest as of that date, but which the Qwest is not obligated to unbundle pursuant to Sections 3.1.2 or 3.1.2.1, shall be available for lease from the Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that loop element. Where Qwest is not required to provide unbundled DS3 loops pursuant to Sections 3.1.2 or 3.1.2.1, CLEC may not obtain new DS3 loops as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

**3.1.2.3 Billing.** The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

**3.1.3 Failure To Convert Non-Impaired Services - DS1 and DS3 Loops.** Absent CLEC Transition of DS1 and DS3 Loops by March 10, 2006, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

**3.1.4** Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these

criteria.

**3.1.5 Dark Fiber Loops Including Fiber Sub-loop.** Qwest is not required to provide CLEC with access to a Dark Fiber Loop on an unbundled basis except for UDF-MTE Subloop below. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

**3.1.5.1 Transition period for Dark Fiber Loop circuits.** For an 18-month period beginning on the effective date of the Triennial Review Remand Order, any Dark Fiber Loop UNEs that a CLEC leases from Qwest as of that date shall be available for lease from Qwest at a rate equal to the higher of (1) 115% of the rate the requesting carrier paid for the loop element on June 15, 2004, or (2) 115% of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that Loop element. CLEC may not obtain new Dark Fiber Loops as Unbundled Network Elements. Qwest and CLEC will work together to identify those circuits impacted.

**3.1.5.2 Failure To Convert Non-Impaired Network Elements - Dark Fiber Loops including Fiber Sub-loop.** Absent CLEC transition of Dark Fiber Loops as of September 10, 2006, Qwest will, or maintains the right to, begin the disconnection process of CLEC Dark Fiber Loops.

**3.1.5.3 UDF MTE Subloop** begins at or near an MTE to provide access to MTE premises wiring.

**3.1.5.3.1 Access to Dark Fiber MTE Subloops at or near an MTE Terminal** within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. The termination and placement of CLEC fiber facilities at an MTE is solely the responsibility of CLEC. CLEC is responsible for all negotiations with the End User Customer and or premises owner for such placement of CLEC facilities.

**3.1.5.3.2 Termination at an MTE.** CLEC shall access the UDF MTE Subloop on the MTE premises at a technically feasible point if possible. If access is not technically feasible on the MTE premises, then CLEC may request access to UDF MTE Subloop at a technically feasible point near the MTE premises. Qwest will prepare and submit to CLEC a quote along with the original Field Verification Quote Preparation form (FVQP) within the interval set forth in Exhibit C. Quotes are on an Individual Case Basis (ICB) and will include costs and an interval in accordance within the interval set forth in the Agreement.

**3.1.5.3.3 A complex IRI** is used to determine if a UDF MTE Subloop is available to gain access to network infrastructure within an MTE. Quotes are on an Individual Case Basis (ICB) and may include costs in

addition to any installation charges specified in Exhibit A. of your Agreement.

**3.1.6 FTTH and FTTC Loops.** For purposes of this Section, a Fiber-to-the-Home (FTTH) loop is a local Loop consisting entirely of fiber optic cable, whether dark or lit, and serving an End User Customer's Premises, or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the MDU's minimum point of entry (MPOE). For purposes of this Section, a Fiber-to-the-Curb (FTTC) loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant loop that is not more than 500 feet from the End User Customer's Premises or, in the case of predominantly residential MDU, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a FTTC must connect to a copper distribution plant loop at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective End User Customer's Premises.

**3.1.6.1 FTTH/FTTC New Builds.** Qwest shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Qwest deploys such a loop to an End User Customer's Premises that had not previously been served by any loop facility prior to October 2, 2003.

**3.1.6.2 FTTH/FTTC Overbuilds.** Qwest shall have no obligation to provide access to an FTTH/FTTC loop as an Unbundled Network Element in any situation where Qwest deploys such a loop parallel to, or in replacement of, an existing copper loop facility. Notwithstanding the foregoing, where Qwest deploys a FTTH/FTTC loop parallel to, or in replacement of, an existing copper loop facility:

**3.1.6.2.1** Qwest shall: (i) leave the existing copper loop connected to the End User Customer's Premises after deploying the FTTH/FTTC loop to such Premises, and (ii) upon request provide access to such copper loop as an Unbundled Network Element. Notwithstanding the foregoing, Qwest shall not be required to incur any expense to ensure that any such existing copper loop remains capable of transmitting signals prior to receiving a request from CLEC for access, as set forth above, in which case Qwest shall restore such copper loop to serviceable condition on an Individual Case Basis. Any such restoration shall not be subject to Performance Indicator Definition or other performance service measurement or intervals. Qwest's obligations under this subsection 3.1.6.2.1 shall terminate when Qwest retires such copper Loop in accordance with the provisions of Section 3.1.6.3 below.

**3.1.6.2.2** In the event Qwest, in accordance with the provisions of Section 3.1.6.3 below, retires the existing copper loop connected to the End User Customer's Premises, Qwest shall provide access, as an Unbundled Network Element, over the FTTH/FTTC loop to a 64 kbps transmission path capable of voice grade service.

***[The following Section 3.1.6.3 applies in states other than Iowa.]***

3.1.6.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH/FTTC Loops. In the event Qwest decides to replace any copper loop or copper Subloop with a FTTH/FTTC Loop, Qwest will: (i) provide notice of such planned replacement on its web site ([www.qwest.com/disclosures](http://www.qwest.com/disclosures)); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Such notices shall be in addition to any applicable state Commission notification that may be required. Any such notice provided to the FCC shall be deemed approved on the ninetieth (90<sup>th</sup>) Day after the FCC's release of its public notice of the filing, unless an objection is filed pursuant to the FCC's rules. In accordance with the FCC's rules: (i) a CLEC objection to a Qwest notice that it plans to replace any copper Loop or copper subloop with a FTTH/FTTC Loop shall be filed with the FCC and served upon Qwest no later than the ninth (9<sup>th</sup>) business day following the release of the FCC's public notice of the filing and (ii) any such objection shall be deemed denied ninety (90) Days after the date on which the FCC releases public notice of the filing, unless the FCC rules otherwise within that period.

***[The following Section 3.1.6.3 applies in Iowa only.]***

3.1.6.3 Retirement of Copper Loops or Copper Subloops and Replacement with FTTH/FTTC Loops. In the event Qwest decides to replace any copper loop or copper Subloop with an FTTH/FTTC Loop, Qwest will: (i) provide notice of such planned replacement on its web site ([www.qwest.com/disclosures](http://www.qwest.com/disclosures)); (ii) provide e-mail notice of such planned retirement to CLECs; and (iii) provide public notice of such planned replacement to the FCC. Such notices shall be in addition to any applicable state Board notification that may be required. Any such notice provided to the FCC shall be deemed approved on the ninetieth (90<sup>th</sup>) Day after the FCC's release of its public notice of the filing, unless an objection is filed pursuant to the FCC's rules. In accordance with the FCC's rules: (i) a CLEC objection to a Qwest notice that it plans to replace any copper Loop or copper subloop with a FTTH/FTTC Loop shall be filed with the FCC and served upon Qwest no later than the ninth (9<sup>th</sup>) business day following the release of the FCC's public notice of the filing and (ii) any such objection shall be deemed denied ninety (90) Days after the date on which the FCC releases public notice of the filing, unless the FCC rules otherwise within that period.

3.1.6.4 Handling of embedded FTTH/FTTC Loops. All embedded CLEC services over FTTH/FTTC Loops in place prior to the signature on this Amendment will be 'grandfathered' subject to re-classification upon change of service.

**3.1.7 Hybrid Loops.** A "Hybrid Loop" is an Unbundled Loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

3.1.7.1 Broadband Services. When CLEC seeks access to a Hybrid Loop for the provision of broadband services, including DS1 or DS3 capacity, but not



DSL, Qwest shall provide CLEC with non-discriminatory access on an unbundled basis to time division multiplexing features, functions, and capabilities of that Hybrid Loop, only where impairment has been found to exist to establish a complete transmission path between Qwest's Central Office and an End User Customer's premises. This access shall include access to all features, functions, and capabilities of the Hybrid Loop that are not used to transmit packetized information.

3.1.7.2 Narrowband Services. When CLEC seeks access to a Hybrid Loop for the provision of narrowband services, Qwest may either:

3.1.7.2.1 Provide non-discriminatory access, on an unbundled basis, to an entire Hybrid Loop capable of voice-grade service (i.e., equivalent to DS0 capacity), using time division multiplexing technology; or

3.1.7.2.2 Provide nondiscriminatory access to a spare home-run copper loop serving that End User Customer on an unbundled basis.

**3.1.8 Subloop Unbundling.** An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire within the cable without removing a splice case to reach the wire within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Unbundled Dark Fiber MTE Subloop which is addressed in Section 3.1.5.3.

***[The following Section 3.1.8 is applicable in Minnesota only.]***

3.1.8 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire within the cable without removing a splice case to reach the wire within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of Interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending

from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Unbundled Dark Fiber MTE Subloop which is addressed in Section 3.1.5.3. Pursuant to Minnesota Exchange and Network Services Tariff – Section 2.1.1, Minnesota is a Minimum Point of Presence state, and therefore Qwest owns intra-building cable in limited Multi-Tenant Environments (e.g., airports, marinas, and trailer parks). The intra-building cable provisions of this Section 3.1.8 apply only in those limited Multi-Tenant Environments in which Qwest owns the intra-building cable.

***[The following Section 3.1.8 is applicable in North Dakota only.]***

3.1.8 An Unbundled Subloop is defined as the distribution portion of a copper Loop or hybrid Loop comprised entirely of copper wire or copper cable that acts as a transmission facility between any point that it is Technically Feasible to access at terminals in Qwest's outside plant (originating outside of the Central Office), including inside wire owned or controlled by Qwest, and terminates at the End User Customer's premises. An accessible terminal is any point on the Loop where technicians can access the wire within the cable without removing a splice case to reach the wire within. Such points may include, but are not limited to, the pole, pedestal, Network Interface Device, minimum point of entry, single point of interconnection, Remote Terminal, Feeder Distribution Interface (FDI), or Serving Area Interface (SAI). CLEC shall not have access on an unbundled basis to a feeder subloop defined as facilities extending from the Central Office to a terminal that is not at the End User Customer's premises or multiple tenant environment (MTE). CLEC shall have access to the feeder facilities only to the extent it is part of a complete transmission path, not a subloop, between the Central Office and the End User Customer's premises or MTE. This section does not address Unbundled Dark Fiber MTE Subloop which is addressed in Section 3.1.5.3. Due to the limited number of locations in North Dakota where Qwest owns premises cable, campus cable or inside wiring, Qwest will provide premises cable, campus cable or inside wiring ownership notification at each MTE terminal.

3.1.8.1 Qwest's obligation to construct a Single Point of Interface (SPOI) is limited to those MTEs where Qwest has distribution facilities to that MTE and owns, controls, or leases the inside wire at the MTE. In addition, Qwest shall have an obligation to construct a SPOI only when CLEC indicates that it intends to place an order for access to an unbundled Subloop Network Element via a SPOI.

3.1.8.2 Access to Distribution Loops or Intra-building Cable Loops at an MTE Terminal within a non-Qwest owned MTE is done through an MTE-POI. Collocation is not required to access Subloops used to access the network infrastructure within an MTE, unless CLEC requires the placement of equipment in a Qwest Premises. Cross-Connect Collocation, refers to creation of a cross connect field and does not constitute Collocation. The terms and conditions of Collocation do not apply to Cross-Connect Collocation if required at or near an MTE.

**3.1.8.3 Failure To Convert Non-Impaired Services – Feeder Subloops.** Absent CLEC Transition of Feeder SubLoop, within ninety (90) Days of Execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91<sup>st</sup> day. CLEC is also responsible for all non-recurring charges associated with such conversions.

**3.1.9 Line Sharing.** Qwest shall not be required to provide Line Sharing unless the Agreement has been amended with a Qwest Commercial Line Sharing Amendment.

**3.1.10 Shared Distribution Loop.** Qwest shall not be required to provide Shared Distribution Loop unless the Agreement has been amended with a Qwest Commercial Shared Distribution Loop Amendment.

#### **4.0 Unbundled Dedicated Interoffice Transport (UDIT)**

**4.0.1** Qwest is not obligated to provide CLEC with unbundled access to dedicated transport that does not connect a pair of Qwest Wire Centers.

**4.0.2** All transport services, when combined with high capacity Loops, are subject to the Service Eligibility Criteria as outlined in Section 2.9 of this Amendment.

**4.1** UDIT is available pursuant to CLEC's Agreement and the following terms and conditions.

**4.1.1 DS1 UDIT.** Qwest shall unbundle DS1 transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are Tier 1 Wire Centers. As such, Qwest must unbundle DS1 transport if a Wire Center at either end of a requested Route is not a Tier 1 Wire Center, or if neither is a Tier 1 Wire Center.

**4.1.1.1** CLEC may obtain a maximum of ten (10) unbundled DS1 dedicated transport circuits on each Route where DS1 dedicated transport is available on an unbundled basis.

**4.1.1.2 Transition period for DS1 transport circuits.** For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS1 dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Sections 4.1.1 or 4.1.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled DS1 transport pursuant to Sections 4.1.1 or 4.1.1.1, CLEC may not obtain new DS1 transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted between Non-Impaired Wire Centers.

**4.1.1.3 Billing.** The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

**4.1.2 DS3 UDIT -** Qwest shall unbundle DS3 transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications, as defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle DS3 transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

**4.1.2.1** CLEC may obtain a maximum of twelve (12) unbundled DS3 dedicated transport circuits on each Route where DS3 dedicated transport is available on an unbundled basis.

**4.1.2.2 Transition period for DS3 transport circuits.** For a twelve (12) month period beginning on the effective date of the Triennial Review Remand Order, any DS3 dedicated transport UNE that a CLEC leases from the Qwest as of that date, but which the Qwest is not obligated to unbundle pursuant to Sections 4.1.2 or 4.1.2.1, shall be available for lease from the Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled DS3 transport pursuant to Sections 4.1.2 or 4.1.2.1, CLEC may not obtain new DS3 transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted between Non-Impaired Wire Centers.

**4.1.2.3 Billing.** The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

**4.1.3** Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

**4.1.4 Failure To Convert Non-Impaired Services – DS1 and DS3 UDIT.** Absent CLEC transition of DS1 and DS3 Transport by March 10, 2006, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

**4.1.5 Failure To Convert Non-Impaired Services – OCn UDIT.** Absent CLEC transition of OCn Transport within ninety (90) days of Execution of this Amendment,

Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91<sup>st</sup> day. CLEC is also responsible for all non-recurring charges associated with such conversions.

**4.1.6 Failure To Convert Non-Impaired Services – DS1 and DS3 E-UDIT and M-UDIT.** Absent CLEC transition of DS1 and DS3 E-UDIT and M-UDIT within ninety (90) days of Execution of this Amendment, Qwest will convert facilities to month to month service arrangements in Qwest's Special Access Tariff and CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91<sup>st</sup> day. CLEC is also responsible for all non-recurring charges associated with such conversions.

**4.1.7 Unbundled Dark Fiber (UDF) IOF**

4.1.7.1 Dedicated dark fiber transport shall be made available to CLEC on an unbundled basis as set forth in the Interconnection Agreement and as set forth below. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

4.1.7.1.1 Qwest shall unbundle dark fiber transport between any pair of Qwest Wire Centers except where, through application of "Tier" classifications defined in Section 1.0 of this Amendment, both Wire Centers defining the Route are either Tier 1 or Tier 2 Wire Centers. As such, Qwest must unbundle dark fiber transport if a Wire Center on either end of a requested Route is a Tier 3 Wire Center.

4.1.7.1.2 **Transition period for dark fiber transport circuits.** For an 18-month period beginning on the effective date of the Triennial Review Remand Order, any dark fiber dedicated transport UNE that a CLEC leases from Qwest as of that date, but which Qwest is not obligated to unbundle pursuant to Section 4.1.7.1.1, shall be available for lease from Qwest at a rate equal to the higher of (1) 115 percent of the rate the requesting carrier paid for the dedicated transport element on June 15, 2004, or (2) 115 percent of the rate the state commission has established or establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that dedicated transport element. Where Qwest is not required to provide unbundled dark fiber transport pursuant to Section 4.1.7.1.1, CLEC may not obtain new dark fiber transport as unbundled network elements. Qwest and CLEC will work together to identify those circuits impacted in Non-Impaired Wire Centers.

4.1.7.1.3 **Billing.** The 15% transitional rate increment will be applied to CLECs bill as a manual adjustment on the following bill cycle. The first bill adjustment will be applied to each account based on the BTN and/or CKT per BAN with an effective bill date of March 11, 2005 on the first or second bill cycle following the contract execution date.

4.1.7.1.4 Qwest shall make available to CLEC a list of those Non-Impaired Wire Centers that satisfy the above criteria and update that list as additional Wire Centers meet these criteria.

4.1.7.1.5 **Failure To Convert Non-Impaired Services – UDF-IOF.** Absent CLEC Transition of UDF, as of September 10, 2006, Qwest will, or maintains the right to, begin the disconnection process of CLEC Dark Fiber Facilities.

4.1.8 **E-UDF and M-UDF (Meet Point Billed-UDF) Transition Language.** Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, any ASRs for Extended Unbundled Dark Fiber (E-UDF) or M-UDF (Meet Point UDF). Qwest account representatives will work with CLECs on a plan to convert any existing E-UDF or M-UDF to other alternative Qwest products or services, if CLEC so desires. CLEC must convert these services by December 10, 2005. Qwest and CLEC will work together to identify those circuits impacted.

4.1.8.1 **Failure To Convert Non-Impaired Networks Elements – E-UDF and M-UDF.** Absent CLEC Transition E-UDF and M-UDF as of December 10, 2005, Qwest will begin or maintain the right to begin, disconnect process of Dark Fiber Facilities.

## 5.0 Unbundled Local Switching

### 5.1 Transition of Unbundled Local circuit Switching, including UNE-P Services

#### 5.1.1 DS0 Capacity (Mass Market)

5.1.1.1 Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS0 capacity loops.

5.1.1.2 Each requesting telecommunications carrier shall migrate its embedded base of end-user customers off of the unbundled local circuit Switching element to an alternative arrangement within twelve (12) months of the effective date of the Triennial Review Remand Order.

5.1.1.3 Notwithstanding Section 5.1.1.2, for a twelve (12) month period from the effective date of the Triennial Review Remand Order, Qwest shall provide access to local circuit Switching on an unbundled basis for a requesting carrier to serve its embedded base of end-user customers. The price for unbundled local circuit Switching in combination with unbundled DS0 capacity loops and shared transport obtained pursuant to this paragraph shall be the higher of: (A) the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 plus one dollar, or (B) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that combination of network elements, plus one dollar. CLEC may not obtain new local Switching as

an unbundled network element. Qwest and CLEC will work together to identify those impacted accounts.

5.1.1.4 Qwest shall provide a requesting telecommunications carrier with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit Switching is required to be made available pursuant to Section 5.1.1.3. These elements are defined as follows:

5.1.1.4.1 Signaling networks. Signaling networks include, but are not limited to, signaling links and signaling transfer points.

5.1.1.4.2 Call-related databases.

(1) Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(2) Service management systems

5.1.1.4.3 Shared transport.

**5.1.1.5 Failure to Convert Non-Impaired Networks Elements – Mass Market Switching**

5.1.1.5.1 Mass Market Unbundled Switching – Stand Alone: Absent CLEC Transition by March 10, 2006, Qwest will disconnect any remaining services on or after this date.

5.1.1.5.2 UNE-P POTS & UNE-P Centrex 21: Absent CLEC Transition by March 10, 2006, Qwest will convert services to the equivalent Qwest Local Exchange Business Measured Resale services, e.g. Class of Service (COS) LMB. In the event Measured Services are unavailable, services will be converted to the equivalent Qwest Local Exchange Business Resale services, e.g. COS 1FB. CLEC is subject to back billing for the difference between the rates for the UNE-P and rates for the Qwest Resale Service to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

5.1.1.5.3 All other Mass Market UNE-P services, including UNE-P Centrex Plus/Centron, UNE-P ISDN BRI, UNE-P PAL, UNE-P PBX: Absent CLEC Transition by March 10, 2006, Qwest will convert services to the equivalent Qwest Local Exchange Resale services. CLEC is

subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to March 11, 2006. CLEC is also responsible for all non-recurring charges associated with such conversions.

5.1.1.5.4 Any UNE-P services with Line Splitting: Absent CLEC Transition by March 10, 2006, Qwest will convert services as described above. Line Splitting will be removed from any UNE-P services with Line Splitting.

**5.1.2 Enterprise Switching. DS1 Capacity and above (i.e., enterprise market)** Qwest is not required to provide access to local circuit Switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops.

**5.1.2.1 Transition for DS1 Capacity Unbundled Switching; including UNE-P** - Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, LSRs for Unbundled Local Switching at the DS1 or above capacity. Qwest account representatives will work with CLEC on a plan to convert any existing Unbundled Local Switching at the DS1 or above capacity to other available Qwest products or services, if CLEC so desires. CLEC will submit complete, error-free LSRs to convert or disconnect any existing Unbundled Local Switching at the DS1 or above capacity with Due Dates within ninety (90) Days of the Execution Date of this Amendment.

**5.1.2.2 Failure to Convert DS1 Capacity Unbundled Switching: including UNE-P.**

5.1.2.2.1 Enterprise Unbundled Switching - Stand Alone: Absent CLEC Transition by the ninety-first (91<sup>st</sup>) day or by March 10, 2006, whichever is earlier, Qwest will disconnect any remaining services on or after this date.

5.1.2.2.2 Absent CLEC Transition pursuant to the timeline above in 5.1.2.1, Qwest will convert services to the equivalent month to month Resale arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Resale arrangement to the ninety-first (91<sup>st</sup>) day. CLEC is also responsible for all non-recurring charges associated with such conversions.

### **5.1.3 Signaling Networks**

**5.1.3.1 Transition for Signaling Networks** - Upon the Execution Date of this Amendment, CLEC will not place, and Qwest will not accept, ASRs for Unbundled Signaling Network Elements. Qwest account representatives will work with CLEC on a plan to convert any existing Unbundled Signaling Network Elements to other available Qwest products or services. CLEC will submit complete, error-free ASRs to convert or disconnect any existing Unbundled Signaling Network Elements with Due Dates that are within ninety (90) Days of



the Execution Date of this Amendment. Qwest and CLEC will work together to identify those network elements.

**5.1.3.2 Failure to Convert Non-Impaired Network Elements – Signaling Networks.** Absent CLEC Transition of Signaling Networks within ninety (90) days of the Execution Date of this Amendment, Qwest will convert services to alternate arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and rates for the Qwest alternative service arrangements to the 91<sup>st</sup> day. CLEC is also responsible for all non-recurring charges associated with such conversions.

## **6.0 Unbundled Network Element Combinations**

### **6.1 Enhanced Extended Loop (EEL)**

**6.1.1** EEL is available pursuant to CLEC's Agreement, the relevant loop and transport terms and conditions of this amendment and the following terms and conditions.

**6.1.1.1** The "Significant Amount of Local Exchange Traffic" eligibility criteria for EEL is replaced by the Service Eligibility Criteria described in Section 2.9, including the collocation requirement of Section 2.9.1.2.5.

**6.1.1.2** CLEC EEL certification process is replaced by the Certification process described in Sections 2.9.1.3.

**6.1.1.3** EEL Audit provisions are replaced by the Service Eligibility Audit process described in Sections 2.9.1.5.

**6.1.1.4** Service Eligibility Criteria in Section 2.9 apply to combinations of high capacity (DS1 and DS3) loops and interoffice transport (high capacity EELs). This includes new UNE EELs, EEL conversions (including commingled EEL conversions) or new commingled EELs (e.g., high capacity loops attached to special access transport). CLEC cannot utilize combinations of Unbundled Network Elements that include DS1 or DS3 Unbundled Loops and DS1 or DS3 unbundled dedicated interoffice transport (UDIT) to create high capacity EELs unless CLEC certifies to Qwest that the EELs meet the Service Eligibility Criteria in Section 2.9.

**6.1.1.5 Transition for EEL –** CLEC must verify that all embedded EEL meet the new Service Eligibility Criteria. Qwest account representatives will work with CLEC on a plan to convert any non-compliant EEL to other service arrangements.

**6.1.1.6 Failure to Convert Non-Compliant EEL.** Absent CLEC Transition of non-compliant EEL within ninety (90) days of the Execution Date of this Amendment, Qwest will convert services to alternate arrangements. CLEC is subject to back billing for the difference between the rates for the UNEs and

rates for the Qwest alternative service arrangements to the 91<sup>st</sup> day. CLEC is also responsible for all non-recurring charges associated with such conversions.

## **6.2 Loop-Mux Combination (LMC)**

### **6.2.1 Description**

6.2.1.1 Loop-mux combination (LMC) is an unbundled Loop, as defined by CLEC's Agreement as amended, (referred to in this Section as an LMC Loop) Commingled with a private line (PLT), or with a special access (SA), Tariffed DS1 or DS3 multiplexed facility with no interoffice transport. The PLT/SA multiplexed facility is provided as either an Interconnection Tie Pair (ITP) or Expanded Interconnection Termination (EICT) from the high side of the multiplexer to CLEC's Collocation. The multiplexer and the Collocation must be located in the same Qwest Wire Center.

6.2.1.2 LMC provides CLEC with the ability to access End User Customers and aggregate DS1 or DS0 unbundled Loops to a higher bandwidth via a PLT/SA DS1 or DS3 multiplexer. There is no interoffice transport between the multiplexer and CLEC's Collocation.

6.2.1.3 Qwest offers the LMC Loop as a billing conversion or as new provisioning.

### **6.2.2 Terms and conditions**

6.2.2.1 An Extended Enhanced Loop (EEL) may be commingled with the PLT/SA multiplexed facility.

6.2.2.2 LMC Loops will be provisioned where existing facilities are available.

6.2.2.3 The PLT/SA DS1 or DS3 multiplexed facility must terminate in a Collocation.

6.2.2.4 The multiplexed facility is subject to all terms and conditions (ordering, provisioning, and billing) of the appropriate Tariff.

6.2.2.5 The multiplexer and the Collocation must be located in the same Qwest Wire Center.

6.2.2.6 A rearrangement nonrecurring charge may be assessed on some requests for work to be performed by Qwest on an existing LMC Loop; or on some Private Line/Special Access circuits when coupled with a Conversion as Specified Request to convert to LMC Loop.

### **6.2.3 Rate Elements**

6.2.3.1 The LMC Loop is the Loop connection between the End User Customer Premises and the multiplexer in the serving Wire Center where CLEC

is Collocated. LMC Loop is available in DS0 and DS1. Recurring and non-recurring charges apply

6.2.3.2 DS0 Mux Low Side Channelization. LMC DS0 channel cards are required for each DS0 LMC Loop connected to a 1/0 LMC multiplexer. Channel cards are available for analog loop start, ground start, reverse battery, and no signaling. See channel performance for recurring charges as set forth in Exhibit A.

6.2.3.3 Nonrecurring charges for billing conversions to LMC Loops and Rearrangement of existing LMC Loops are set forth in Exhibit A.

#### **6.2.4 Ordering Process**

6.2.4.1 Ordering processes for LMC Loop(s) are contained in this Agreement and in Qwest's Product Catalog (PCAT). The following is a high-level description of the ordering process:

6.2.4.1.1 Step 1: Complete product questionnaire for LMC Loop(s) with account team representative.

6.2.4.1.2 Step 2: Obtain billing account number (BAN) through account team representative.

6.2.4.1.3 Step 3: Allow two (2) to three (3) weeks from Qwest's receipt of a completed questionnaire for accurate loading of LMC rates to the Qwest billing system.

6.2.4.1.4 Step 4: After account team notification, place LMC Loop orders via an LSR.

6.2.4.2 Prior to placing an order on behalf of each End User Customer, CLEC shall be responsible for obtaining and have in its possession a Proof of Authorization (POA) as set forth in this Agreement.

6.2.4.3 Standard service intervals for LMC Loops are in the Service Interval Guide (SIG) available at [www.qwest.com/wholesale](http://www.qwest.com/wholesale).

6.2.4.4 Due date intervals are established when Qwest receives a complete and accurate LSR made through the IMA or EDI interfaces or through facsimile. For LMC Loops, the date the LSR is received is considered the start of the service interval if the order is received on a business Day prior to 3:00 p.m. For LMC Loops, the service interval will begin on the next business Day for service requests received on a non-business day or after 3:00 p.m. on a business day. Business Days exclude Saturdays, Sundays, New Year's Day, Memorial Day, Independence Day (4<sup>th</sup> of July), Labor Day, Thanksgiving Day and Christmas Day.

#### **6.2.5 Billing**

6.2.5.1 Qwest shall provide CLEC, on a monthly basis, within seven to ten (7 to 10) calendar Days of the last day of the most recent billing period, in an agreed upon standard electronic billing format, billing information including (1) a summary bill, and (2) individual End User Customer sub-account information.

#### 6.2.6 Maintenance and Repair

6.2.6.1 Qwest will maintain facilities and equipment for LMC Loops provided under this Agreement. Qwest will maintain the multiplexed facility pursuant to the Tariff. CLEC or its End User Customers may not rearrange, move, disconnect or attempt to repair Qwest facilities or equipment, other than by connection or disconnection to any interface between Qwest and the End User Customer, without the prior written consent of Qwest.

### 6.3 Commingling

6.3.1 To the extent it is Technically Feasible, CLEC may Commingle Telecommunications Services purchased on a resale basis with an Unbundled Network Element or combination of Unbundled Network Elements. Notwithstanding the foregoing, the following are not available for resale Commingling:

- a) Non-telecommunications services;
- b) Enhanced or Information services;
- c) Network Elements offered pursuant to Section 271.

6.3.2 CLEC may Commingle UNEs and combinations of UNEs with wholesale services and facilities (e.g., Switched and Special Access Services offered pursuant to Tariff) and request Qwest to perform the necessary functions to provision such Commingling. CLEC will be required to provide the CFA (Connecting Facility Assignment) of CLEC's network demarcation (e.g., Collocation or multiplexing facilities) for each UNE, UNE Combination, or wholesale service when requesting Qwest to perform the Commingling of such services. Qwest shall not deny access to a UNE on the grounds that the UNE or UNE Combination shares part of Qwest's network with Access Services.

6.3.3 When a UNE and service are commingled, the service interval for each facility being commingled will apply only as long as a unique provisioning process is not required for the UNE or service due to the commingling. Performance measurements and/or remedies are not applicable to the total commingled arrangement but do apply to each facility or service ordered within the commingled arrangement. Work performed by Qwest to provide Commingled services that are not subject to standard provisioning intervals will not be subject to performance measures and remedies, if any, contained in this Agreement or elsewhere, by virtue of that service's inclusion in a requested Commingled service arrangement. Provisioning intervals applicable to services included within a requested Commingled service arrangement will not begin to run until CLEC provides a complete and accurate service request, necessary CFAs to Qwest, and Qwest completes work required to perform the Commingling that is in addition to work required to provision the service as a stand-alone facility or service.

6.3.4 Qwest will not combine or Commingle services or Network Elements that are offered by Qwest pursuant to Section 271 of the Communications Act of 1934, as amended, with Unbundled Network Elements or combinations of Unbundled Network Elements.

6.3.5 Services are available for Commingling only in the manner in which they are provided in Qwest's applicable product Tariffs, catalogs, price lists, or other Telecommunications Services offerings.

6.3.6 Entrance Facilities and mid-span meet SPOI obtained pursuant to the Local Interconnection section of the Agreement are not available for Commingling.

6.3.7 CLEC may request Qwest to commingle DS1 or DS0 analog voice grade unbundled Loops with DS3 or DS1 multiplexed facilities ordered by CLEC from Qwest's special access or private line Tariffs. Terms and conditions for this Commingled arrangement are provided in Section 6.2 of this Amendment.

## **7.0 Ratcheting**

7.1 To the extent that CLEC requests Qwest to commingle a UNE or a UNE Combination with one or more facilities or services that CLEC has obtained at wholesale from Qwest pursuant to a method other than unbundling under Section 251(c)(3) of the Act, Qwest will not be required to bill that wholesale circuit at multiple rates, otherwise known as ratcheting. Such commingling will not affect the prices of UNEs or UNE Combinations involved.

7.2 To the extent a multiplexed facility is included in a Commingled circuit then: (1) the multiplexed facility will be ordered and billed at the UNE rate if and only if all circuits entering the multiplexer are UNEs and (2) in all other situations the multiplexed facility will be ordered and billed pursuant to the appropriate Tariff.

## **8.0 Routine Network Modifications**

8.1 Qwest shall make all routine network modifications to unbundled loop and transport facilities used by CLEC where the requested loop or transport facility has already been constructed. Qwest shall perform these routine network modifications to unbundled loop or transport facilities in a nondiscriminatory fashion, without regard to whether the loop or transport facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

8.2 A routine network modification is an activity that the Qwest regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that Qwest ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable CLEC to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for CLEC.

**LTC AFFIDAVIT  
EXHIBIT 4**



Larry Christensen  
Director - Interconnection Agreements  
1801 California Street, Room 2430  
Denver, CO 80202  
303-896-4686  
larry.christensen@qwest.com

VIA EMAIL & OVERNIGHT MAIL

May 23, 2007

Tom Bade  
President - Arizona Dial Tone  
7170 W Oakland Street  
Chandler, AZ 85226  
480-705-9461  
[tombade@arizonadialtone.com](mailto:tombade@arizonadialtone.com)

Mr. Bade:

This notice is to advise Arizona Dial Tone that any orders it places for new local switching as an unbundled network element ("UNE") under its interconnection agreements with Qwest will be rejected beginning Friday, May 25, 2007. Federal Communications Commission ("FCC") Rule 51.319(d)(2)(iii) provides: "Requesting carriers may not obtain new local switching as an unbundled network element." That rule was self-executing as of March 11, 2005 under the Triennial Review Remand Order ("TRRO"). The only Local Service Requests ("LSRs") Qwest will accept from Arizona Dial Tone for its UNE Platform ("UNE-P") services are for disconnection or conversion to alternative services. All other LSRs would be orders for new local switching as a UNE. Please note that Arizona Dial Tone may order Resale services or enter into the Qwest Platform Plus™ (QPP™) agreement for alternative service arrangements.

Despite repeated good faith attempts by Qwest, Arizona Dial Tone is the *only* CLEC in Qwest's territory that has refused to transition its UNE-P services in accordance with the Triennial Review Order ("TRO") and TRRO changes in law. Qwest again encourages Arizona Dial Tone to contact us to bring your interconnection agreement into compliance with the changes in law.

Qwest reminds Arizona Dial Tone that retroactive billing will apply to all Arizona Dial Tone UNE-P lines that were in service after March 11, 2005. The retroactive billing will include the FCC's \$1.00/port mandated transition period rate increase from March 11, 2005 through March 10, 2006. It will also include rate differences, beginning March 10, 2006, between UNE-P service and any Qwest alternative service to which Arizona Dial Tone transitions. Arizona Dial Tone's liability for this retroactive billing continues to grow.

Sincerely,

Larry Christensen

**LTC AFFIDAVIT  
EXHIBIT 5**



Affidavit of Larry Christensen  
Qwest Corporation  
LTC Affidavit Exhibit 5



Qwest Services Corporation  
1801 California Street, 10th Floor  
Denver, Colorado 80202  
Phone 303.383.8552  
Facsimile 303.295.7049

Andrew J. Creighton  
Corporate Counsel

May 31, 2007

Via Facsimile (480) 733-3748  
William D. Cleaveland, Esq.  
Davis Miles, PLLC  
560 W. Brown Rd., Suite 3004  
Mesa, Arizona 85201-3225

Re: Arizona Dialtone, Inc.

Dear Mr. Cleaveland,

Your letter dated May 24, 2007 to Larry Christensen was referred to me for a reply. Qwest does not agree with your assertion that Arizona Corporation Commission Decision No. 68440 requires Qwest to provision any new orders for Section 251(c)(3) unbundled switching or Section 271 unbundled switching under the parties' existing interconnection agreements in Arizona, Colorado, and Minnesota.

To the contrary, the FCC's ban on new UNE-P orders under Rule 51.319(d)(2)(iii) adopted under the TRRO was self-executing as of March 11, 2005. The last sentence of that rule provides "Requesting carriers may not obtain new local switching as an unbundled network element." District courts in Georgia, Kentucky and Mississippi and the Court of Appeals for the Eleventh Judicial Circuit have confirmed the FCC's ban on new UNE-P orders was self executing. See *BellSouth v. MCIMetro*, 2005, U.S. Dist. Lexis 9394, at \*8 (2005) affirmed by 425 F.3d 964 (11th Cir. 2005); *BellSouth v. Cinergy*, 2006 U.S. Dist. Lexis 11535, at \*25 (2006); *BellSouth v. Mississippi PSC*, 368 F. Supp. 2d 557, 562 (2005).

The Kentucky and Mississippi district court decisions point out that commissions in Alabama, Delaware, California, Florida, Indiana, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Texas, and Virginia have also held that the FCC's ban on new UNE-P orders was self executing.

Arizona Dialtone's interconnection agreements also do not require Qwest to provision new orders for Section 271 unbundled switching. Therefore, Arizona Dialtone does not have any ability to order new Section 251(c)(3) or Section 271 unbundled switching under the parties' interconnection agreements. Nor does Arizona Dialtone's interconnection agreements allow it to commingle Section 251(c)(3) loops with Section 271 unbundled switching.

As Larry has previously discussed with Tom Bade of Arizona Dialtone, Qwest is willing to enter into the Qwest Platform Plus™ ("QPP™") agreement with Arizona Dialtone. Arizona Dialtone can order new unbundled switching under that agreement. The provisions of that agreement are intended to be in compliance with and based on the existing laws regarding Qwest's obligation under Section 271 to provide unbundled switching. Qwest has entered into the QPP agreement with numerous CLECs that also operate in Arizona, Colorado and Minnesota. Those CLECs agreed in the QPP agreement that the rates for the Section 271 unbundled switching in the agreement are just and reasonable.

Mr. Cleaveland  
Page 2 of 2

Arizona Dialtone may also order resale POTS and PAL under the terms of its existing interconnection agreements.

Arizona Dialtone is the only CLEC in Qwest's territory that has refused to transition its UNE-P services to the QPP agreement or to some other alternative arrangement such as resale POTs and PAL as required under the TRRO. Qwest has been maintaining records of the liability that has been growing for Arizona Dialtone's use of Qwest's facilities during the FCC's mandated transition period from March 11, 2005 to March 11, 2006 and after March 11, 2006 (the end of the FCC's mandated transition period).

FCC Rule 51.319(d)(2)(iii) provides: "... for a 12-month period from the effective date of the Triennial Review Remand Order, an incumbent LEC shall provide access to local circuit switching on an unbundled basis for a requesting carrier to serve its embedded base of end-user customers. The price for unbundled local circuit switching in combination with unbundled DS0 capacity loops and shared transport obtained pursuant to this paragraph shall be the higher of the rate at which the requesting carrier obtained that combination of network elements on June 15, 2004 plus one dollar, or, the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of the Triennial Review Remand Order, for that combination of network elements, plus one dollar. Requesting carriers may not obtain new local switching as an unbundled network element." Qwest calculates Arizona Dialtone's liability under that rule is \$99,121 for Arizona, \$36,125 for Colorado, and \$8,675 for Minnesota.

FCC Rule 51.319(d)(2)(ii) provides: "Each requesting telecommunications carrier shall migrate its embedded base of end-user customers off of the unbundled local circuit switching element to an alternative arrangement within 12 months of the effective date of the Triennial Review Remand Order." Qwest calculates Arizona Dialtone's liability under that rule for use of Qwest's facilities after March 11, 2006 through April 2007 is approximately \$870,121 for Arizona, \$355,959 for Colorado and \$92,286 for Minnesota based on the month to month PAL and POTS resale rates.

If Arizona Dialtone and Qwest enter into the QPP agreement, Qwest calculates Arizona Dialtone's liability from January 1, 2005 (the effective date of the QPP agreement) through April 2007 is \$888,497 for Arizona, \$338,221 for Colorado, and \$74,745 for Minnesota.

If Arizona Dialtone would like to discuss entering into the QPP agreement, entering into the TRO/TRRO amendment to the parties' interconnection agreement, and resolving Arizona Dialtone's liability, Tom should contact Larry or you can contact me.

Sincerely,



Andrew J. Creighton

cc: Larry Christensen  
Norman G. Curtright, Esq.

# **APPENDIX 1**

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Unbundled Access to Network Elements	)	WC Docket No. 04-313
	)	
Review of the Section 251 Unbundling	)	CC Docket No. 01-338
Obligations of Incumbent Local Exchange	)	
Carriers	)	

**ORDER ON REMAND**

**Adopted:**      **December 15, 2004**

**Released:**      **February 4, 2005**

By the Commission: Chairman Powell and Commissioner Abernathy issuing separate statements;  
Commissioner Martin issuing a separate statement at a later date; Commissioners Copps and Adelstein  
dissenting and issuing separate statements.

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## I. INTRODUCTION

1. One of the major goals of Congress in enacting the Telecommunications Act of 1996 (1996 Act) was to open local telecommunications service markets to competition.<sup>1</sup> To that end, Congress imposed certain interconnection, resale, and network access requirements on incumbent local exchange carriers (LECs) through section 251 of the 1996 Act. Here, we focus on the market-opening provisions of section 251(c)(3), which require that incumbent LECs make elements of their networks available on an unbundled basis to new entrants at cost-based rates, pursuant to standards set out in section 251(d)(2).

<sup>1</sup> The 1996 Act amended the Communications Act of 1934, 47 U.S.C. § 151 *et seq.* We refer to these Acts collectively as the “Communications Act” or the “Act.”

space in the incumbent LEC's central office can be dealt with adequately through the Commission's rules governing access to collocation, which is a more direct way of remedying any such problems.<sup>622</sup>

225. Finally, we note that there are many costs that all competitors in a market – incumbent LECs and competitive LECs alike – must incur and recover.<sup>623</sup> We again do not reach a national finding of impairment on the basis of such costs. Commenters cite a number of costs associated with using existing circuit switches to serve the mass market that “are simply disparities faced by virtually any new entrant in any sector of the economy, no matter how competitive the sector.”<sup>624</sup>

#### D. Transition Plan

226. Because unbundled local circuit switching will no longer be made available pursuant to section 251(c)(3), we establish a transition plan to migrate the embedded base of unbundled local circuit switching used to serve mass market customers to an alternative service arrangement.<sup>625</sup> In particular, eliminating unbundled access to incumbent LEC switching on a flash cut basis could substantially disrupt service to millions of mass market customers, as well as the business plans of competitors.<sup>626</sup>

227. We require competitive LECs to submit the necessary orders to convert their mass market customers to an alternative service arrangement within twelve months of the effective date of this Order. This transition period shall apply only to the embedded customer base, and does not permit competitive LECs to add new UNE-P arrangements using unbundled access to local circuit switching pursuant to

(Continued from previous page)

of the Act and giving some substance to the ‘necessary’ and ‘impair’ requirements.”); *see also, e.g., USTA II*, 359 F.3d at 570; *USTA I*, 290 F.3d at 425-26.

<sup>622</sup> *See, e.g.*, 47 C.F.R. § 51.323(k)(3) (requiring incumbent LECs to make available adjacent space collocation where physical collocation space is exhausted).

<sup>623</sup> *See, e.g.*, Qwest Reply at 76 n.216.

<sup>624</sup> *USTA I*, 290 F.3d at 426. Moreover, the competitive carrier cost-based arguments fail to take into consideration that “average unit costs are necessarily higher at the outset for any new entrant into virtually any business.” *USTA I*, 290 F.3d at 427. In the *Triennial Review Order*, the Commission found that the record was insufficient to support an impairment finding based on several theoretical sources of potential economic impairment, including costs associated with using existing circuit switches to serve the mass market, such as the purchase of additional analog equipment, costs to acquire additional collocation space, the purchase of additional cabling and power, as well as overhead and marketing costs. *Triennial Review Order*, 18 FCC Rcd at 17251, 17285-86, paras. 441, 485. Commenters in this proceeding cite a number of these sorts of costs. *See, e.g., ALTS et al.* Comments at 93; PACE Coalition, *et al.* Comments at 70, 75; *see also, e.g., ACN Reply* at 2 (citing the current financial climate as hindering its ability to obtain the financing necessary to convert to a UNE-L strategy).

<sup>625</sup> The *Triennial Review Order* left unresolved the issue of the appropriate number of DS0 lines that distinguishes mass market customers from enterprise market customers for unbundled local circuit switching. *See Triennial Review Order*, 18 FCC Rcd at 17293, para. 497. We need not resolve that issue here because, in this Order, we eliminate unbundled access to local circuit switching for the mass market, as well. The transition period we adopt here thus applies to all unbundled local circuit switching arrangements used to serve customers at less than the DS1 capacity level as of the effective date of this Order. The transition for local circuit switching for the DS1 enterprise market was established in the *Triennial Review Order*, 18 FCC Rcd at 17318, para. 532.

<sup>626</sup> *See Interim Order and NPRM*, 19 FCC Rcd at 16794, 16795-96, paras. 20, 24 (discussing need for transition to avoid harmful disruption in the telecommunications markets).

section 251(c)(3) except as otherwise specified in this Order.<sup>627</sup> The transition we adopt is based on the incumbent LECs' asserted ability to convert the embedded base of UNE-P customers to UNE-L on a timely basis while continuing to meet hot cut demand for new UNE-L customers. We believe it is appropriate to adopt a longer, twelve-month, transition period than was proposed in the *Interim Order and NPRM*.<sup>628</sup> We believe that the twelve-month period provides adequate time for both competitive LECs and incumbent LECs to perform the tasks necessary to an orderly transition, which could include deploying competitive infrastructure, negotiating alternative access arrangements, and performing loop cut overs or other conversions.<sup>629</sup> Consequently, carriers have twelve months from the effective date of this Order to modify their interconnection agreements, including completing any change of law processes. By the end of the twelve month period, requesting carriers must transition the affected mass market local circuit switching UNEs to alternative facilities or arrangements.

228. We do, however, adopt the *Interim Order and NPRM*'s proposal that unbundled access to local circuit switching during the transition period be priced at the higher of (1) the rate at which the requesting carrier leased UNE-P on June 15, 2004 plus one dollar, or (2) the rate the state public utility commission establishes, if any, between June 16, 2004, and the effective date of this Order, for UNE-P plus one dollar.<sup>630</sup> We believe that the moderate price increases help ensure an orderly transition by

<sup>627</sup> The requesting carrier shall continue to have access to shared transport, signaling, and call-related databases as provided in the *Triennial Review Order* for those arrangements relying on unbundled local circuit switching that have not yet been converted to alternative arrangements. *Triennial Review Order*, 18 FCC Rcd at 17319-20, 17323-34, paras. 533-34, 542-60. We note that TSI's petition for reconsideration of the *Triennial Review Order* that requests that the Commission find signaling elements to be competitively available either through third party providers or through self-provisioning and that competitive LECs do not need mandatory access to signaling was not timely filed. TSI Telecommunications Services, Inc. Petition for Reconsideration, CC Docket No. 01-338 (filed Oct. 3, 2003). In any event, even if we were to consider TSI's petition, because we otherwise generally eliminate unbundled switching, and with it unbundled access to signaling, we dismiss that petition as moot.

<sup>628</sup> See *Interim Order and NPRM*, 19 FCC Rcd at 16799, para. 29 (proposing a six-month period).

<sup>629</sup> See, e.g., Letter from James Bradford Ramsay, General Counsel, NARUC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-313, CC Docket No. 01-338 at 3 (filed Dec. 8, 2004) (stating that the transition plan must provide time for competitive LECs "to revise their business plans and decide to deploy any needed infrastructure, generate needed capital for economically sound deployments, negotiate alternative arrangements, or withdraw from particular markets"); Letter from Ruth Milkman, Counsel for MCI, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-313, CC Docket No. 01-338 at 1-2 (filed Dec. 7, 2004) (asserting that any transition for mass market local circuit switching needs to accommodate the possibility that some competitive LECs will need to partner with other competitive LECs that already "have in place the equipment and facilities necessary to serve customers via UNE-L"); New York Department of Public Service Comments at 12-13 (proposing that the transition proposed in the *Interim NPRM* be lengthened by an additional six months due in part to the need for additional time for carriers and consumers to adapt to the new circumstances); *supra* para. 215 (discussing evidence that some competing carriers may seek alternative service arrangements rather than relying on UNE-L); see also Michigan-Based CLEC Coalition Comments at 8 (proposing a twelve month transition plan for mass market local circuit switching).

<sup>630</sup> *Interim Order and NPRM*, 19 FCC Rcd at 16797-99, para. 29. To the extent that a state public utility commission order raises some rates and lowers others for the aggregate combination of loops, shared transport, and switching (i.e., UNE-P), the incumbent LEC may adopt either all or none of these UNE platform rate changes. This choice by the incumbent LEC shall not diminish the effectiveness of the state commission order with respect to UNE loop rates (when not ordered as part of the UNE platform). UNE-P arrangements no longer subject to unbundling shall be subject to true-up to the applicable transition rate upon the amendment of the relevant interconnection agreements, including any applicable change of law processes.

mitigating the rate shock that could be suffered by competitive LECs if TELRIC pricing were immediately eliminated for these network elements, while at the same time, these price increases, and the limited duration of the transition, provide some protection of the interests of incumbent LECs in those situations where unbundling is not required.<sup>631</sup> We expect incumbent LECs to meet hot cut demand, and to work to prevent unnecessary customer disruption. To the extent that specific problems arise, carriers are free to petition for waiver of this requirement with respect to their particular circumstances.<sup>632</sup> Of course, the transition mechanism adopted here is simply a default process, and pursuant to section 252(a)(1), carriers remain free to negotiate alternative arrangements superseding this transition period. The transition mechanism adopted today also does not replace or supersede any commercial arrangements carriers have reached for the continued provision of UNE-P or for a transition to UNE-L.<sup>633</sup>

## VIII. REMAINING ISSUES

### A. Conversions

229. We determined in the *Triennial Review Order* that competitive LECs may convert tariffed incumbent LEC services to UNEs and UNE combinations, provided that the competitive LEC seeking to convert such services satisfies any applicable eligibility criteria.<sup>634</sup> The *USTA II* court upheld this determination.<sup>635</sup> The BOCs have nevertheless urged us in this proceeding to prohibit conversions entirely.<sup>636</sup> Given our conclusion above that a carrier's current use of special access does not demonstrate a lack of impairment,<sup>637</sup> we conclude that a bar on conversions would be inappropriate.

230. We decline to adopt an across-the-board prohibition on conversions for three reasons. First, the scope of the purported problem that a conversion bar is designed to remedy is far smaller than several commenters suggest. The BOCs argue that unless the conversion rule is repealed, a tremendous number of existing special access channel terminations will be converted to UNEs by interexchange carriers.<sup>638</sup> But the rules we adopt today already prevent the use of UNEs – and therefore also prevent the conversion

<sup>631</sup> See *id.* at 16799, para. 30.

<sup>632</sup> 47 C.F.R. § 1.3.

<sup>633</sup> See, e.g., MCI, *MCI and Qwest Reach Commercial Agreement for Wholesale Services*, Press Release (May 31, 2004), available at <http://global.mci.com/news/news2.xml?newsid=10710&mode=long&lang=en&width=530&langlinks=off>; SBC, *SBC, Sage Telecom Reach Wholesale Telecom Services Agreement*, Press Release (Apr. 3, 2004), available at <http://www.sbc.com/gen/press-room?pid=5097&cdvn=news&newsarticleid=21080>.

<sup>634</sup> *Triennial Review Order*, 18 FCC Rcd at 17348-50, paras. 585-89.

<sup>635</sup> *USTA II*, 359 F.3d at 592-93.

<sup>636</sup> See BellSouth Comments at 37-38; Qwest Comments at 71-76; SBC Comments at 93-94; Verizon Comments at 75-77.

<sup>637</sup> See *supra* Part IV.D.

<sup>638</sup> See, e.g., Qwest Dec. 8, 2004 Newman/Crain *Ex Parte* Letter at 2 (describing the efforts of one interexchange carrier in Qwest's region to convert special access channel terminations to UNEs); BellSouth Dec. 7, 2004 Special Access *Ex Parte* Letter at 5 (arguing that continuing to permit conversions "would create the possibility of a massive wealth transfer between carriers through a shift [from special access circuits] to unbundled facilities").